

**DISTRICT OF COLUMBIA
OFFICIAL CODE**


**OCTOBER 2013
ADVANCE SERVICE**
Updates the
June 2013 Supplements

Including all permanent acts in effect as of July 1, 2013, and annotations posted to LEXIS-NEXIS for the D.C. Court of Appeals and for opinions that will appear in the following traditional reporters: Supreme Court Reporter, Federal Reporter, Federal Supplement, and Bankruptcy Reporter.

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DISTRICT OF COLUMBIA

OFFICIAL CODE

2001 EDITION

Updates the
June 2013 Supplements

OCTOBER ADVANCE SERVICE



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PREFACE

This Advance Service updates the District of Columbia Official Code, 2001 Edition, with permanent, temporary, and emergency legislation and judicial constructions contained in annotations. These pocket parts contain the Laws, general and permanent in their nature, relating to or in force in the District of Columbia (except such laws as are of application in the General and Permanent Laws of the United States) in effect as of July 1, 2013.

This Supplement also updates the D.C. Official Code annotations by including notes taken from District of Columbia cases appearing in the following sources:

- Atlantic Reporter, 3d Series
- Supreme Court Reporter
- Federal Reporter, 3d Series
- Federal Supplement, 3d Series
- Bankruptcy Reporter
- D.C. Law Review

Current legislation between pamphlets or pocket parts maybe accessed online at www.lexisnexis.com/advance, www.lexisnexis.com/research, and <http://dclclims1.dccouncil.us/lims>.

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Later laws and annotations will be cumulated in a spring pamphlet and subsequent annual Pocket Parts.

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PART A.

THE COUNCIL.

§ 1-204.01. Creation and membership.

(a) There is established a Council of the District of Columbia; and the members of the Council shall be elected by the registered qualified electors of the District.

(b)(1) The Council established under subsection (a) of this section shall consist of 13 members elected on a partisan basis. The Chairman and 4 members shall be elected at large in the District, and 8 members shall be elected 1 each from the 8 election wards established, from time to time, under

Chapter 10 of this title. The term of office of the members of the Council shall be 4 years, except as provided in paragraph (3) of this subsection, and shall begin at noon on January 2nd of the year following their election.

(2) In the case of the first election held for the office of member of the Council after January 2, 1975, not more than 2 of the at-large members (excluding the Chairman) shall be nominated by the same political party. Thereafter, a political party may nominate a number of candidates for the office of at-large member of the Council equal to 1 less than the total number of at-large members (excluding the Chairman) to be elected in such election.

(3) To fill a vacancy in the Office of Chairman, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Chairman to fill a vacancy in the Office of Chairman shall take office on the day in which the Board of Elections and Ethics certifies his election, and shall serve as Chairman only for the remainder of the term during which such vacancy occurred. When the Office of Chairman becomes vacant, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as Chairman pro tempore until the election of a new Chairman.

(4) Of the members first elected after January 2, 1975, the Chairman and 2 members elected at large and 4 of the members elected from election wards shall serve for 4-year terms; and 2 of the at-large members and 4 of the members elected from election wards shall serve for 2-year terms. The members to serve the 4-year terms and the members to serve the 2-year terms shall be determined by the Board of Elections and Ethics by lot, except that not more than one of the at-large members nominated by any political party shall serve for any such 4-year term.

(c) The Council may establish and select such other officers and employees as it deems necessary and appropriate to carry out the functions of the Council.

(d)(1) In the event of a vacancy in the Council of a member elected from a ward, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected as a member to fill a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred.

(2) In the event of a vacancy in the Office of Mayor, and if the Chairman becomes a candidate for the Office of Mayor to fill such vacancy, the Office of Chairman shall be deemed vacant as of the date of the filing of his candidacy. In the event of a vacancy in the Council of a member elected at large, other

than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy, until the Board of Elections and Ethics can hold a special election to fill such vacancy, and such special election shall be held on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person appointed to fill such vacancy shall take office on the date of his appointment and shall serve as a member of the Council until the day on which the Board certifies the election of the member elected to fill such vacancy in either a special election or a general election. The person elected as a member to fill such a vacancy on the Council shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as a member of the Council only for the remainder of the term during which such vacancy occurred. With respect to a vacancy on the Council of a member elected at large who is not affiliated with any political party, the Council shall appoint a similarly non-affiliated person to fill such vacancy until such vacancy can be filled in a special election in the manner prescribed in this paragraph. Such person appointed by the Council shall take office and serve as a member at the same time and for the same term as a member appointed by a central committee of a political party.

(3) Notwithstanding any other provision of this section, at no time shall there be more than 3 members (including the Chairman) serving at large on the Council who are affiliated with the same political party.

(e)(1) By a $\frac{5}{6}$ vote of its members, the Council may adopt a resolution of expulsion if it finds, based on substantial evidence, that a member of the Council took an action that amounts to a gross failure to meet the highest standards of personal and professional conduct. Expulsion is the most severe punitive action, serving as a penalty imposed for egregious wrongdoing. Expulsion results in the removal of the member. Expulsion should be used in cases in which the Council determines that the violation of law committed by a member is of the most serious nature, including those violations that substantially threaten the public trust. To protect the exercise of official member duties and the overriding principle of freedom of speech, the Council shall not impose expulsion on any member for the exercise of his or her First Amendment right, no matter how distasteful the expression of that right was to the Council and the District, or in the official exercise of his or her office.

(2) The Council shall include in its Rules of Organization procedures for investigation, and consideration of, the expulsion of a member.

(Dec. 24, 1973, 87 Stat. 785, Pub. L. 93-198, title IV, § 401; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); Aug. 29, 1974, 88 Stat. 793, Pub. L. 93-395, § 1(2); July 18, 2012, 126 Stat. 1133, Pub. L. 112-145, § 2(a); July 31, 2013, D.C. Law 19-124A, § 401(a), 59 DCR 1862.)

Section references. — This section is referenced in § 1-203.03, § 1-204.114, § 1-207.71, § 1-301.47, § 1-603.01, § 1-1001.17, § 2-502, § 2-601, § 2-1401.02, § 38-1201.03, § 38-1800.02, § 39-202, § 47-802, and § 47-1401.

Effect of amendments.

The 2013 amendment by D.C. Law 19-124A added (e).

Legislative history of Law 19-124A. — Law 19-124A, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012. Pursuant to the requirements of §§ 601(j) and 702(b) of the act, D.C. Act 19-318 was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012, and transmitted to Congress on May 13, 2013 for a 35-day review, in accordance with Section 303 of the Home Rule Act. The Council of the District of Columbia gave notice at 60 D.C. REG. 12134 that the 35-day Congressional review period has ended, and D.C. Act 19-318 is now D.C. Law 19-124A, effective July 31, 2013.

Effective date.

Section 601(j) of D.C. Law 19-124 provided: “(j) Title IV shall apply on its effective date as provided in section 303 of the District of Colum-

bia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).”

Section 601(j) of D.C. Law 19-124 contained an applicability clause for title IV of the Act that stated that title IV, containing section 401, would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

Section 702(b) of D.C. Law 19-124 provided that § 401 of the act would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

D.C. Law 19-124 became effective on April 27, 2012. Section 401 of that law was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012. Section 401 became effective as law on July 31, 2013, following 35 days of congressional review and assigned Law Number 19-124A. D.C. Law 19-124A, § 401 amended sections 401, 402, and 421 of the District of Columbia Home Rule Act (D.C. Official Code §§ 1-204.01, 1-204.02, and 1-204.21).

Editor’s notes.

Applicability of D.C. Law 19-124, § 401: Section 601(j) of D.C. Law 19-124 provided that Title IV of the act shall apply on its effective date as provided in § 1-203.03; in other words, that D.C. Law 19-124, § 401 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

§ 1-204.02. Qualifications for holding office.

No person shall hold the office of member of the Council, including the Office of Chairman, unless he: (1) Is a qualified elector; (2) is domiciled in the District and if he is nominated for election from a particular ward, resides in the ward from which he is nominated; (3) has resided and been domiciled in the District for 1 year immediately preceding the day on which the general or special election for such office is to be held; (4) has not been convicted of a felony while holding the office; and (5) holds no public office (other than his employment in and position as a member of the Council), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall prohibit any such person, while a member of the Council, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. A member of the Council shall forfeit his

office upon failure to maintain the qualifications required by this section, and, in the case of the Chairman, § 1-204.03(c).

(Dec. 24, 1973, 87 Stat. 786, Pub. L. 93-198, title IV, § 402; July 31, 2013, D.C. Law 19-124A, § 401(b), 59 DCR 1862.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-124A added “has not been convicted of a felony while holding the office” and made related changes.

Legislative history of Law 19-124A. — Law 19-124A, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012. Pursuant to the requirements of §§ 601(j) and 702(b) of the act, D.C. Act 19-318 was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012, and transmitted to Congress on May 13, 2013 for a 35-day review, in accordance with Section 303 of the Home Rule Act. The Council of the District of Columbia gave notice at 60 D.C. REG. 12134 that the 35-day Congressional review period has ended, and D.C. Act 19-318 is now D.C. Law 19-124A, effective July 31, 2013.

Effective date. — Section 601(j) of D.C. Law 19-124 provided: “(j) Title IV shall apply on its effective date as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).”

Section 601(j) of D.C. Law 19-124 contained an applicability clause for title IV of the Act that stated that title IV, containing section 401, would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

Section 702(b) of D.C. Law 19-124 provided that § 401 of the act would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

D.C. Law 19-124 became effective on April 27, 2012. Section 401 of that law was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012. Section 401 became effective as law on July 31, 2013, following 35 days of congressional review and assigned Law Number 19-124A. D.C. Law 19-124A, § 401 amended sections 401, 402, and 421 of the District of Columbia Home Rule Act (D.C. Official Code §§ 1-204.01, 1-204.02, and 1-204.21).

Editor’s notes. — Applicability of D.C. Law 19-124, § 401: Section 601(j) of D.C. Law 19-124 provided that Title IV of the act shall apply on its effective date as provided in § 1-203.03; in other words, that D.C. Law 19-124, § 401 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

PART B.

THE MAYOR.

§ 1-204.21. Election, qualifications, vacancy, and compensation.

(a) There is established the Office of Mayor of the District of Columbia; and the Mayor shall be elected by the registered qualified electors of the District.

(b) The Mayor, established by subsection (a) of this section, shall be elected, on a partisan basis, for a term of 4 years beginning at noon on January 2nd of the year following his election.

(c)(1) No person shall hold the Office of Mayor unless he: (A) Is a qualified elector; (B) has resided and been domiciled in the District for 1 year immedi-

ately preceding the day on which the general or special election for Mayor is to be held; (C) has not been convicted of a felony while holding the office; and (D) is not engaged in any employment (whether as an employee or as a self-employed individual) and holds no public office or position (other than his employment in and position as Mayor), for which he is compensated in an amount in excess of his actual expenses in connection therewith, except that nothing in this clause shall be construed as prohibiting such person, while holding the Office of Mayor, from serving as a delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States, or from holding an appointment in a reserve component of an armed force of the United States other than a member serving on active duty under a call for more than 30 days. The Mayor shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) To fill a vacancy in the Office of Mayor, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. The person elected Mayor to fill a vacancy in the Office of Mayor shall take office on the day on which the Board of Elections and Ethics certifies his election, and shall serve as Mayor only for the remainder of the term during which such vacancy occurred. When the Office of Mayor becomes vacant the Chairman shall become Acting Mayor and shall serve from the date such vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Mayor at which time he shall again become Chairman. While the Chairman is Acting Mayor, the Chairman shall receive the compensation regularly paid the Mayor, and shall receive no compensation as Chairman or member of the Council. While the Chairman is Acting Mayor, the Council shall select one of the elected at-large members of the Council to serve as Chairman and one to serve as chairman pro tempore, until the return of the regularly elected Chairman.

(d) The Mayor shall receive compensation, payable in equal installments, at a rate equal to the maximum rate, as may be established from time to time, for level III of the Executive Schedule in § 5314 of Title 5 of the United States Code. Such rate of compensation may be increased or decreased by act of the Council. Such change in such compensation, upon enactment by the Council in accordance with the provisions of this chapter, shall apply with respect to the term of Mayor next beginning after the date of such change. In addition, the Mayor may receive an allowance, in such amount as the Council may from time to time establish, for official, reception, and representation expenses, which he shall certify in reasonable detail to the Council.

(Dec. 24, 1973, 87 Stat. 789, Pub. L. 93-198, title IV, § 421; Aug. 14, 1974, 88 Stat. 458, Pub. L. 93-376, title III, § 306(a); July 18, 2012, 126 Stat. 1133, Pub. L. 112-145, § 2(b); July 31, 2013, D.C. Law 19-124A, § 401(c), 59 DCR 1862.)

Section references. — This section is referenced in § 1-203.03, § 1-204.114, § 1-301.47, § 1-602.02, § 1-611.09, § 1-1001.17, § 2-601, § 38-1201.03, § 39-202, § 47-802, § 47-1401, and § 48-901.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-124A substituted “to be held; (C) has not been convicted of a felony while holding the office; and (D) is” for “to be held; and (C) is” in (c)(1).

Legislative history of Law 19-124A. — Law 19-124A, the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-511, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on December 6, 2011, and December 20, 2011, respectively. Signed by the Mayor on February 27, 2012, it was assigned Act No. 19-318 and transmitted to both Houses of Congress for its review. D.C. Law 19-124 became effective on April 27, 2012. Pursuant to the requirements of §§ 601(j) and 702(b) of the act, D.C. Act 19-318 was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012, and transmitted to Congress on May 13, 2013 for a 35-day review, in accordance with Section 303 of the Home Rule Act. The Council of the District of Columbia gave notice at 60 D.C. REG. 12134 that the 35-day Congressional review period has ended, and D.C. Act 19-318 is now D.C. Law 19-124A, effective July 31, 2013.

Effective date.

Section 601(j) of D.C. Law 19-124 provided:

“(j) Title IV shall apply on its effective date as provided in section 303 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 784; D.C. Official Code § 1-203.03).”

Section 601(j) of D.C. Law 19-124 contained an applicability clause for title IV of the Act that stated that title IV, containing section 401, would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

Section 702(b) of D.C. Law 19-124 provided that § 401 of the act would become law upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

D.C. Law 19-124 became effective on April 27, 2012. Section 401 of that law was ratified by the electors of the District of Columbia in a general and special election held on November 6, 2012, and certified by the District of Columbia Board of Elections on November 29, 2012. Section 401 became effective as law on July 31, 2013, following 35 days of congressional review and assigned Law Number 19-124A. D.C. Law 19-124A, § 401 amended sections 401, 402, and 421 of the District of Columbia Home Rule Act (D.C. Official Code §§ 1-204.01, 1-204.02, and 1-204.21).

Editor’s notes. — Applicability of D.C. Law 19-124, § 401: Section 601(j) of D.C. Law 19-124 provided that Title IV of the act shall apply on its effective date as provided in § 1-203.03; in other words, that D.C. Law 19-124, § 401 shall apply upon its ratification by a majority of the registered qualified electors of the District of Columbia voting in a referendum and following 35 days of congressional review.

PART B-i.

CHIEF FINANCIAL OFFICER.

§ 1-204.24b. Appointment of the Chief Financial Officer.

(a) *Appointment.* —

(1) *In general.* — The Chief Financial Officer shall be appointed by the Mayor with the advice and consent, by resolution, of the Council. Upon confirmation by the Council, the name of the Chief Financial Officer shall be submitted to the Committees on Appropriations of the House of Representatives and Senate, the Committee on Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate for a 30-day period of review and comment before the appointment takes effect.

(2) *Special rule for control years.* — During a control year, the Chief Financial Officer shall be appointed by the Mayor as follows:

(A) Prior to the appointment, the Authority may submit recommendations for the appointment to the Mayor.

(B) In consultation with the Authority and the Council, the Mayor shall nominate an individual for appointment and notify the Council of the nomination.

(C) After the expiration of the 7-day period which begins on the date the Mayor notifies the Council of the nomination under subparagraph (B) of this paragraph, the Mayor shall notify the Authority of the nomination.

(D) The nomination shall be effective subject to approval by a majority vote of the Authority.

(b) *Term.* —

(1) *In general.* — All appointments made after June 30, 2007, shall be for a term of 5 years, except for appointments made for the remainder of unexpired terms. The appointments shall have an anniversary date of July 1.

(2) *Transition.* — For purposes of §§ 1-204.24a — 1-204.24f, the individual serving as Chief Financial Officer as of October 16, 2006, shall be deemed to have been appointed under this subsection, except that such individual's initial term of office shall begin upon such date and shall end on June 30, 2007.

(3) *Continuance.* — Any Chief Financial Officer may continue to serve beyond his term until a successor takes office.

(4) *Vacancies.* — Subject to subsection (c), any vacancy in the Office of Chief Financial Officer shall be filled in the same manner as the original appointment under subsection (a) of this section.

(5) *Pay.* — The Chief Financial Officer shall be paid at an annual rate equal to the rate of basic pay payable for level I of the Executive Schedule.

(c) *Authorizing treasurer or deputy CFO to perform duties in acting capacity in event of vacancy in office.* —

(1) *Service as CFO.* —

(A) *In general.* — Except as provided in subparagraph (B), if there is a vacancy in the Office of Chief Financial Officer because the Chief Financial Officer has died, resigned, or is otherwise unable to perform the functions and duties of the Office—

(i) the District of Columbia Treasurer shall serve as the Chief Financial Officer in an acting capacity, subject to the time limitation of paragraph (2); or

(ii) the Mayor may direct one of the Deputy Chief Financial Officers of the Office referred to in § 1-204.24a(c)(1) through (4) to serve as the Chief Financial Officer in an acting capacity, subject to the time limitation of paragraph (2).

(B) *Exclusion of certain individuals.* — Notwithstanding subparagraph (A), an individual may not serve as the Chief Financial Officer under such clause if the individual did not serve as the District of Columbia Treasurer or as one of such Deputy Chief Financial Officers of the Office of the Chief Financial Officer (as the case may be) for at least 90 days during the 1-year period which ends on the date the vacancy occurs.

(2) *Time limitation.* — A vacancy in the Office of the Chief Financial Officer may not be filled by the service of any individual in an acting capacity

under paragraph (1) after the expiration of the 210-day period which begins on the date the vacancy occurs.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, § 424(b), as added Apr. 17, 1995, 109 Stat. 142, Pub. L. 104-8, § 302(a); Nov. 22, 2000, 114 Stat. 2440, Pub. L. 106-522, § 155(a); Dec. 21, 2001, 115 Stat. 949, Pub. L. 107-96, § 111(d); Oct. 16, 2006, 120 Stat. 2031, Pub. L. 109-356, § 201(a); May 1, 2013, 127 Stat. 441, Pub. L. 113-8, § 2.)

Section references. — This section is referenced in § 1-204.24a.

Effect of amendments.

Pub. L. 113-8 added “Subject to subsection (c)” to the beginning of (b)(4); and added (c).

Short title. — Pub. L. 113-8, § 1. provided:

“This Act may be cited as the ‘District of Columbia Chief Financial Officer Vacancy Act.’”

Editor’s notes. — Pub. L. 113-8, § 2(c) provided that the amendments made by the Act shall apply with respect to vacancies occurring on or after May 1, 2013.

PART C-i.

THE ATTORNEY GENERAL.

§ 1-204.35. Election of the Attorney General.

(a) The Attorney General for the District of Columbia shall be elected on a partisan basis by the registered qualified electors of the District. Nothing in this section shall prevent a candidate for the position of Attorney General from belonging to a political party.

(b)(1) If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Board of Elections shall hold a special election in the District on the Tuesday occurring at least 70 days and not more than 174 days after the date on which such vacancy occurs which the Board of Elections determines, based on a totality of the circumstances, taking into account, inter alia, cultural and religious holidays and the administrability of the election, will provide the opportunity for the greatest level of voter participation. If a vacancy in the position of Attorney General occurs as a consequence of resignation, permanent disability, death, or other reason, the Board of Elections and Ethics shall hold a special election in the District on the 1st Tuesday occurring more than 114 days after the date on which the vacancy occurs, unless the Board of Elections and Ethics determines that the vacancy could be more practicably filled in a special election held on the same day as the next general election to be held in the District occurring within 60 days of the date on which a special election would otherwise have been held under the provisions of this paragraph. The person elected Attorney General to fill a vacancy in the Office of the Attorney General shall take office on the day in which the Board of Elections and Ethics certifies his or her election, and shall serve as Attorney General only for the remainder of the term during which the vacancy occurred unless reelected.

(2) When the position of Attorney General becomes vacant, the Chief Deputy Attorney General shall become the Acting Attorney General and shall

serve from the date the vacancy occurs until the date on which the Board of Elections and Ethics certifies the election of the new Attorney General at which time he or she shall again become the Chief Deputy Attorney General. While the Chief Deputy Attorney General is Acting Attorney General, he or she shall receive the compensation regularly paid the Attorney General, and shall receive no compensation as Chief Deputy Attorney General.

(c) The term of office for the Attorney General shall be 4 years and shall begin on noon on January 2nd of the year following his or her election. The term of office of the Attorney General shall coincide with the term of office of the Mayor.

(d) Any candidate for the position of Attorney General shall meet the qualifications of § 1-301.83, prior to the day on which the election for the Attorney General is to be held.

(e) The first election for the position of Attorney General shall be after January 1, 2014.

(Dec. 24, 1973, 87 Stat. 774, Pub. L. 93-198, title IV, § 435, as added May 28, 2011, D.C. Law 18-160A, § 201(b), 57 DCR 3012; July 18, 2012, 126, Pub. L. 112-145, § 2(c).)

PART F.

INDEPENDENT AGENCIES AND AUTHORITIES.

§ 1-204.96. Independent financial management, personnel, and procurement authority of District of Columbia Water and Sewer Authority.

(a) *Financial Management, Personnel, and Procurement Authority.* — Notwithstanding any other provision of this chapter or any District of Columbia law, the financial management, personnel, and procurement functions and responsibilities of the District of Columbia Water and Sewer Authority shall be established exclusively pursuant to rules and regulations adopted by its Board of Directors. Nothing in the previous sentence may be construed to affect the application to the District of Columbia Water and Sewer Authority of § 1-204.45a, § 1-204.51(d), § 1-204.53(c), or § 1-204.90(g) [§ 1-204.90(h)].

(b) *Consistency With Existing Authorizing Law.* — The rules and regulations adopted by the Board of Directors of the District of Columbia Water and Sewer Authority to establish the financial management, personnel, and procurement functions and responsibilities of the Authority shall be consistent with the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, as such Act is in effect as of January 1, 2008.

(Dec. 24, 1973, 87 Stat. 811, Pub. L. 93-198, title IV, § 496, as added July 15, 2008, 122 Stat. 2491, Pub. L. 110-273, § 3(a)(2).)

CHAPTER 3. SPECIFIED GOVERNMENTAL AUTHORITY.

Subchapter I. Additional Governmental Powers and Responsibilities

Sec.

1-303.23. Penalties and enforcement.

Sec.

1-301.89b. Report on constitutional challenge or District of Columbia Home Rule Act validity challenge.

Subchapter XII-A. Grant Administration

1-328.05. Workforce job development grant-making authority.

Subchapter II. Regulatory Authority

Part B

Outdoor Signs

1-303.21. Rules.

1-303.22. License required; fee. [Repealed].

*Subchapter I. Additional Governmental Powers and Responsibilities.***§ 1-301.89b. Report on constitutional challenge or District of Columbia Home Rule Act validity challenge.**

(a) The Attorney General shall submit a report to the Council of the District of Columbia of any action, suit, or proceeding brought in a court of law in which the Council of the District of Columbia is not a party, and the constitutionality or the validity under Chapter 2 of Title 1 [§ 1-201.01 et seq.], of any District statute, rule, regulation, program, policy, or enactment of any type is questioned, and the Attorney General has been notified pursuant to:

(1) Rule 24(c) of the Superior Court of the District of Columbia Rules of Civil Procedure; or

(2) Rule 5.1(a) of the Federal Rules of Civil Procedure.

(b) The Attorney General shall submit a report to the Council of the District of Columbia of the establishment or implementation of any formal or informal policy by the Attorney General, or any officer of the Office of the Attorney General, to refrain from:

(1) Enforcing, applying, or administering any provision of any District statute, rule, regulation, program, policy, or enactment of any type affecting the public interest of the District of Columbia; or

(2) Defending, either by affirmatively contesting or through refraining from defending, any District statute, rule, regulation, program, policy, or enactment of any type affecting the public interest of the District of Columbia.

(c)(1) A report required under subsection (a) of this section shall be submitted to the Council within 30 calendar days from the date the Attorney General receives notice as provided in subsection (a)(1) or (a)(2) of this section, and shall contain sufficient information to identify the action, suit, or proceeding underlying the challenge.

(2) A report required under subsection (b) of this section shall be submitted to the Council within 30 calendar days from the date the Attorney General establishes or implements a formal or informal policy, or is made aware of the establishment or implementation of a formal or informal policy, as described in subsection (b) of this section, and shall contain:

(A) The date the formal or informal policy, as described in subsection (b) of this section, was established or implemented; and

(B) A complete and detailed statement describing the policy and identifying the statute, rule, regulation, program, policy, or enactment that is the subject of the policy.

(May 27, 2010, D.C. Law 18-160, § 111, as added Apr. 27, 2013, D.C. Law 19-287, § 2, 60 DCR 2322.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-287 added this section.

Legislative history of Law 19-287. — Law 19-287, the “Council Notification on Enforcement of Laws Amendment Act of 2012,” was introduced in Council and assigned Bill No.

19-802. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-654 and transmitted to Congress for its review. D.C. Law 19-287 became effective on April 27, 2013.

Subchapter II. Regulatory Authority.

PART B.

OUTDOOR SIGNS.

§ 1-303.21. Rules.

(a) The Mayor shall issue, amend, repeal and enforce rules governing the hanging, placing, painting, projection, display, and maintenance of signs on public space, public buildings, or other property owned or controlled by the District and on private property within public view within the District. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved. The rules shall not take effect until approved by the Council.

(b) The rules shall:

(1) Determine the types of signs that shall be allowed and prohibited and establish permit requirements for signs, where appropriate;

(2) Establish standards for the location, size, and illumination of different types of signs;

(3) Allow for the display of signs that contribute to a healthy business environment and civic communication while protecting the health, safety, convenience, and welfare of the public, including protection of the appearance of outdoor space throughout the District;

(4) State the specific requirements for large signs and billboards;

(5) Establish standards for signs on historic sites or in historic areas;

(6) Provide structural requirements for signs to ensure their safety;

(7) Ensure compliance with federal highway requirements;

(8) Provide for the creation of Designated Entertainment Areas to allow for the display of additional signs;

(9) Establish permit fees; and

(10) Be in compliance with section 3107A of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 3107A).

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 1; Apr. 27, 2013, D.C. Law 19-289, § 2(a), 60 DCR 2328.)

Section references. — This section is referenced in § 1-303.23.

Effect of amendments. — The 2013 amendment by D.C. Law 19-289 rewrote the section.

Legislative history of Law 19-289. — Law 19-289, the “Sign Regulation Authorization Amendment of 2012,” was introduced in Council and assigned Bill No. 19-819. The Bill was adopted on first and second readings on Dec. 4,

2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-656 and transmitted to Congress for its review. D.C. Law 19-289 became effective on Jan. 29, 2013.

Editor’s notes. — Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

§ 1-303.22. License required; fee. [Repealed].

Repealed.

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 2; Sept. 14, 1976, D.C. Law 1-82, title I, § 102, 23 DCR 2461; Oct. 5, 1985, D.C. Law 6-42, § 421, 32 DCR 4450; Sept. 26, 1995, D.C. Law 11-52, § 301, 42 DCR 3684; Apr. 20, 1999, D.C. Law 12-261, § 2003(a), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(a), 50 DCR 6913; Apr. 27, 2013, D.C. Law 19-289, § 2(b), 60 DCR 2328.)

Section references. — This section is referenced in § 9-1159 and § 50-921.04.

Legislative history of Law 19-289. — See note to § 1-303.21.

Editor’s notes.

Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Applicability of D.C. Law 19-289: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor’s issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

§ 1-303.23. Penalties and enforcement.

(a) Adjudication of infractions of these rules shall be pursuant Chapter 18 of Title 2 [§ 2-1801.01 et seq.] (“Civil Infractions Act”), and Chapter 8 of Title 8 [§ 8-801 et seq.] (“Litter Control Act”). The Mayor shall enforce the rules applicable to signs on public space, public buildings, and other owned or controlled by the District property under the Litter Control Act and the rules applicable to signs on private property under the Civil Infractions Act. The Mayor may also establish, by rulemaking, a schedule of fines and penalties for infractions of these rules that are separate from the fines and penalties imposed under the Civil Infractions Act and the Litter Control Act. These rules shall be subject to Council review and approval as described in § 1-303.21.

(b) A person or entity, whether as principal, agent, or employee, violating rules issued pursuant to § 1-303.21 or this section shall, upon conviction in the Superior Court of the District of Columbia, be fined no less than \$5 nor more

than \$200 for each offense, and a fine shall be imposed for each day that the violation continues.

(Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 457, 32 DCR 4450; Apr. 27, 2013, D.C. Law 19-289, § 2(c), 60 DCR 2328.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-289 rewrote the section.

Legislative history of Law 19-289. — See note to § 1-303.21.

Editor's notes. — Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Subchapter XII-A. Grant Administration.

§ 1-328.05. Workforce job development grant-making authority.

(a) The Director of the Department of Employment Services (“DOES”) may issue competitive grants to individuals and organizations from the funds made available to the DOES pursuant to local appropriations or, in coordination with the Workforce Investment Council, pursuant to the federal Workforce Investment Act of 1998, approved August 7, 1998 (112 Stat. 936; 29 U.S.C § 2822), for workforce development purposes, including increasing occupational skills, job retention, employment opportunities, and earnings of the District’s workforce pursuant to:

- (1) Section 32-241;
- (2) Section 32-242;
- (3) Section 32-752;
- (4) Sections 32-1331 and 32-1332; and
- (5) Section 32-1610.

(b) Notwithstanding the provisions of § 47-368.06, grants that may be issued pursuant to this section include grants that the Mayor, Director of the DOES, or an agency receives through an intra-District transfer, a memorandum of understanding, or a reprogramming from an agency lacking grant-making authority.

(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this section.

(d) By July 30, 2013, the Director of DOES shall submit to the Council a report providing an analysis of, and corrective actions for any problems pertaining to, the following issues related to contracting and procurement processing with DOES:

- (1) The procedures through which DOES processes and issues grants;
- (2) The average timeframe in which a contract is processed; and
- (3) The common delays to grant issuance.

(Apr. 23, 2013, D.C. Law 19-269, § 2, 60 DCR 2136.)

Legislative history of Law 19-269. — Law 19-269, the “Workforce Job Development Grant-Making Authority Act of 2012,” was introduced in Council and assigned Bill No. 19-619. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25,

2013, it was assigned Act No. 19-648 and transmitted to Congress for its review. D.C. Law 19-269 became effective on April 23, 2013.

Editor’s notes. — Sunset provision: Section 3 of D.C. Law 19-269 provided that the act shall sunset 2 years after April 23, 2013.

CHAPTER 6. MERIT PERSONNEL SYSTEM.

Subchapter IV. Organization for Personnel Management

Sec.

1-604.06. Personnel authority.

Subchapter IX. Excepted Service

1-609.03. Number of Excepted Service employees; redelegation of authority to appoint; publication requirement.

Subchapter X-A. Executive Service

1-610.52. Executive Service pay schedule.

Subchapter XVIII. Employee Conduct

1-618.03. Ethics counselors; codification of advisory opinions. [Repealed].

Subchapter XX-B. Mandatory Drug and Alcohol Testing of Certain Employees of the Department of Human Services and the Commission on Mental Health Services

Sec.

1-620.24. Implied consent of employees who operate motor vehicles.

Subchapter XX-C. Mandatory Drug and Alcohol Testing for Certain Employees Who Serve Children

1-620.33. Motor vehicle operators.

Subchapter I. Findings; Purpose.

§ 1-601.01. Findings.

Section references. — This section is referenced in § 1-607.03, § 1-1001.06, § 1-1161.01, § 2-359.10, § 2-1515.08, § 2-1594,

§ 7-771.01, § 7-771.05, § 34-2202.15, § 34-2202.17, and § 44-951.10.

CASE NOTES

Exhaustion of administrative remedies.

Former probationary teacher’s claim of unlawful retaliation for challenging and complaining about alleged school policy to alter student test scores was not subject to dismissal for failure to exhaust administrative remedies because he attempted to initiate the traditional process under the Comprehensive Merit Per-

sonnel Act by pursuing a claim through the district’s office of employee appeals, but this office determined that it did not have jurisdiction due to the employee’s probationary status, and thus, the employee could have gone no further in pursuing and exhausting his claim. *Mpoy v. Fenty*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90960 (D.D.C. July 2, 2012).

Subchapter IV. Organization for Personnel Management.

§ 1-604.06. Personnel authority.

(a) The implementation of the rules and regulations shall be undertaken by the appropriate personnel authority for employees of the District.

(b) For the purposes of subsection (a) of this section, the personnel authority for District of Columbia government means the Mayor for all employees, except as provided in § 1-602.03 and as follows:

(1) For noneducational employees of the District of Columbia Board of Education, the personnel authority is the District of Columbia Board of Education;

(2) For noneducational employees of the Board of Trustees of the University of the District of Columbia, the personnel authority is the Board of Trustees of the University of the District of Columbia;

(3) For employees of the Council of the District of Columbia, the personnel authority is:

(A)(i) The Chairman of the Council for all central staff of the Council and the employees in the Legal Services employed by the Council of the District of Columbia. For the purposes of this subchapter, the term "central staff of the Council" refers to those employees described in § 1-609.03(a)(3) except those assigned to an individual member of the Council; provided, however, that the Secretary, General Counsel, and Budget Director to the Council to the Council shall be appointed by the Council of the District of Columbia according to its rules of procedure and organization; and

(ii) For employees of the Council, the Chairman of the Council shall exercise the authority possessed by the Director of the Department of Human Resources and may adopt personnel procedures applicable to those employees; and

(B) each member of the Council for his or her personal and committee staff; provided, however, that the respective committees of the Council shall approve the appointment of each committee staffperson. The Chairman and each member of the Council shall utilize the Secretary to the Council for the actual transaction of all personnel matters for employees of the Council;

(3A) For the Executive Director of the Office of Advisory Neighborhood Commissions, the personnel authority is the Chairman of the Council.

(4) For employees of the Board of Elections, the personnel authority is the Board of Elections; provided, however, that this authority shall not apply to the Director of Campaign Finance (§ 1-1163.02). For employees in the Office of Director of Campaign Finance, the personnel authority is the Director of Campaign Finance;

(5) For employees of the Public Service Commission, the personnel authority is the Public Service Commission; provided, however, that the People's Counsel (D.C. Official Code, § 34-804) shall be appointed according to law and for employees under the direct administrative control of the People's Counsel, the personnel authority is the People's Counsel;

(6) For the Executive Director of the Public Employee Relations Board, created by subchapter V of this chapter, the personnel authority is the Public Employee Relations Board; and for all other employees of the Board, the personnel authority is the Executive Director of the Board;

(7) For the Executive Director of the Office of Employee Appeals and the General Counsel of the Office of Employee Appeals created by subchapter VI of this chapter, the personnel authority is the Office of Employee Appeals; and for all other employees of the Office, the personnel authority is the Executive Director;

(8) For employees of the Office of District of Columbia Auditor (D.C. Official Code, § 1-204.55), the personnel authority is the Auditor of the District of Columbia;

(9) Repealed;

(10) For employees of the District of Columbia Armory Board (D.C. Official Code, § 3-302), the personnel authority is the Armory Board;

(11) For employees of the District of Columbia Law Revision Commission, the personnel authority is the District of Columbia Law Revision Commission;

(12) For employees of the District of Columbia Board of Library Trustees, the personnel authority is the Board of Library Trustees;

(13) Repealed;

(14) For the Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board ("Board"), the personnel authority is the Board, and for all other employees of the Board the personnel authority is the Executive Director of the Board;

(15) For employees of the District of Columbia Retirement Board, the personnel authority is the District of Columbia Retirement Board;

(16) For the Director of the Office of Zoning, the personnel authority shall be the District members of the Zoning Commission for the District of Columbia, and for any other employee of the Office of Zoning the personnel authority shall be the Director of the Office of Zoning;

(17) For employees of the Child and Family Services Agency, the personnel authority is the Director of the Child and Family Services Agency;

(18) For employees of the Criminal Justice Coordinating Council, the personnel authority is the Criminal Justice Coordinating Council;

(19) For employees of the District of Columbia Sentencing and Criminal Code Revision Commission, the personnel authority is the District of Columbia Sentencing and Criminal Code Revision Commission;

(20) For employees of the Department of Mental Health, the personnel authority is the Director of the Department of Mental Health;

(21) For the Director of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the members of the Alcoholic Beverage Control Board for the District of Columbia, and for any other employee of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the Director of the Alcoholic Beverage Regulation Administration; and

(22) For employees of the State Board of Education, the personnel authority is the State Board of Education.

(Mar. 3, 1979, D.C. Law 2-139, § 406, 25 DCR 5740; Feb. 26, 1981, D.C. Law 3-119, § 5, 27 DCR 5641; Aug. 2, 1983, D.C. Law 5-24, § 12(a), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(g), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(a), 34 DCR 670; Mar. 16, 1989, D.C. Law 7-228, § 2(b), 36 DCR 754; Mar. 24, 1990, D.C. Law 8-97, § 3(b), 37 DCR 1046; May 15, 1990, D.C. Law 8-127, § 2(a), 37 DCR 2093; Sept. 20, 1990, D.C. Law 8-163, § 6, 37 DCR 4676; Aug. 1, 1996, D.C. Law 11-152, § 302(f), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(c), 45 DCR 2464; Apr. 12, 2000, D.C. Law 13-91, § 103(e), 47 DCR 520; Apr. 4, 2001, D.C. Law 13-277, § 3(b)(2), 48 DCR 2043; Oct. 3,

2001, D.C. Law 14-28, §§ 1507(a)(1), 3803(a), 48 DCR 6981; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(2), 48 DCR 7674; Mar. 6, 2002, D.C. Law 14-80, § 3, 48 DCR 11268; Mar. 13, 2004, D.C. Law 15-105, §§ 21, 22(a), 23, 51 DCR 881; Sept. 30, 2004, D.C. Law 15-187, § 102(a), 51 DCR 6525; Sept. 30, 2004, D.C. Law 15-190, § 3(a), 51 DCR 6737; Apr. 7, 2006, D.C. Law 16-91, §§ 110(a), 119, 120(a), 52 DCR 10637; June 16, 2006, D.C. Law 16-126, § 3(a), 53 DCR 4709; Mar. 3, 2010, D.C. Law 18-111, § 1103, 57 DCR 181; Apr. 27, 2012, D.C. Law 19-124, § 501(c)(2), 59 DCR 1862; Apr. 27, 2013, D.C. Law 19-284, § 2(a), 60 DCR 2312.)

Section references. — This section is referenced in § 1-606.11, § 1-609.05, and § 50-305.

Effect of amendments.

The 2013 amendment by D.C. Law 19-284 added (b)(22); and made related changes.

Legislative history of Law 19-284. — Law 19-284, the “State Board of Education Person-

nel Authority Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-774. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-651 and transmitted to Congress for its review. D.C. Law 19-284 became effective on April 27, 2013.

Subchapter VI. Office of Employee Appeals.

§ 1-606.03. Appeal procedures.

Section references. — This section is referenced in § 1-606.11 and § 1-616.52.

CASE NOTES

ANALYSIS

Construction.

Due process of law.

Construction.

Under local rules, a litigant would have 30 days from a District of Columbia Office of Employee Appeals (OEA) order under D.C. Code § 1-606.03(d) to bring an action for judicial enforcement of a ruling against a recalcitrant agency, D.C. Super Ct. Civ. P. Rules, Title XV, Rule 1; such a scheme cannot constitute a meaningful post-deprivation remedy, because it irrationally and unfairly would put the onus of immediately filing an action on an employee who had just received a favorable ruling from the OEA within a short time. Such a scheme would render OEA orders meaningless, as it would allow an agency to grasp victory from the jaws of defeat and nullify an adverse order merely by doing nothing for 31 days. *Steinberg v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 157134 (D.D.C. Nov. 2, 2012).

Under local rules, a litigant would have 30 days from a District of Columbia Office of Employee Appeals (OEA) order under D.C. Code § 1-606.03(d) to bring an action for judicial enforcement of a ruling against a recalcitrant

agency, D.C. Super Ct. Civ. P. Rules, Title XV, Rule 1; such a scheme cannot constitute a meaningful post-deprivation remedy, because it irrationally and unfairly would put the onus of immediately filing an action on an employee who had just received a favorable ruling from the OEA within a short time. Such a scheme would render OEA orders meaningless, as it would allow an agency to grasp victory from the jaws of defeat and nullify an adverse order merely by doing nothing for 31 days. *Steinberg v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 157134 (D.D.C. Nov. 2, 2012).

Due process of law.

In an action in which former employees alleged that the statutory scheme prescribed by the Comprehensive Merit Protection Act, D.C. Code § 1-601.01 et seq., denied the employees an opportunity to be heard after their terminations, the District of Columbia did not violate the employees’ Fifth Amendment procedural due process rights because the employees did not establish that the process available to them was inadequate or that they were denied such process. *Badgett v. Dist. of Columbia*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 25044 (D.D.C. Feb. 25, 2013).

*Subchapter IX. Excepted Service.***§ 1-609.03. Number of Excepted Service employees; redelegation of authority to appoint; publication requirement.**

(a) Under qualifications issued pursuant to § 1-609.01, each appropriate personnel authority may appoint persons to the Excepted Service as follows:

(1) The Mayor may appoint no more than 160 persons, no more than 2 of whom may be appointed or detailed to a single agency, other than the Executive Office of the Mayor or the Office of the City Administrator;

(2) The Members of the Council of the District of Columbia may appoint persons to their staffs, except those permanent technical and clerical employees appointed by the Secretary or General Counsel and those in the Legal Service;

(3) The Inspector General may appoint no more than 15 persons;

(4) The District of Columbia Auditor may appoint no more than 4 persons;

(5) The Chief of Police may appoint no more than 6 persons;

(6) The Chief of the Fire and Emergency Medical Services Department may appoint no more than 6 persons;

(7) The Board of Trustees of the University of the District of Columbia may appoint officers of the University, persons who report directly to the President, persons who head major units of the University, academic administrators, and persons in a confidential relationship to the foregoing, exclusive of those listed in the definition of the Educational Service; provided, that the total number of persons appointed by the University to the Excepted Service shall not exceed 20;

(8) The Criminal Justice Coordinating Council may appoint no more than 9 persons;

(9) The District of Columbia Sentencing and Criminal Code Revision Commission may appoint no more than 6 persons;

(10) The State Board of Education may appoint no more than 3 full-time equivalent employees; and

(11) Each other personnel authority not expressly designated in paragraphs (1) through (10) of this subsection may appoint 2 persons.

(b) The authority to appoint persons to the Excepted Service, which is vested in subsection (a) of this section, may be redelegated, in whole or in part.

(c) Within 45 days of actual appointment and within 45 days of any change in such appointment, the names, position titles, and agency placements of all persons appointed to Excepted Service positions under the authority of this section shall be:

(1) Published in the District of Columbia Register; and

(2) Posted online on a website accessible to the public.

(d) At the discretion of the personnel authority, an individual appointed to the Excepted Service at grade level DS-11 or above pursuant to this section:

(1) May be paid in accordance with the pay schedule for the Management Supervisory Service as provided in § 1-609.56; and

(2) May be placed in any step of the appropriate grade of that schedule.

(e) The personnel authority may authorize performance incentives for exceptional service for individuals appointed pursuant to this section not to exceed 10% of the rate of basic pay in any year. Such exceptional service incentives may be paid only when the Excepted Service employee is bound by a performance contract that clearly identifies measurable goals and outcomes and the employee has exceeded contractual expectations in the year for which the incentive is paid.

(f) An individual appointed to the Excepted Service pursuant to this section or § 1-609.08 may be paid severance pay upon separation for non-disciplinary reasons according to the length of the individual's employment with the District government as follows:

<u>Length of Employment</u>	<u>Maximum Severance</u>
Up to 6 months	2 weeks of the employee's basic pay
6 months to 1 year	4 weeks of the employee's basic pay
1 to 3 years	8 weeks of the employee's basic pay
More than 3 years	10 weeks of the employee's basic pay.

(g)(1) Pursuant to regulations as the Mayor may prescribe, the following expenses may be paid to an individual being interviewed for, or an appointee to, a hard-to-fill Excepted Service position at a DS-11 or above:

(A) Reasonable pre-employment travel expenses;

(B) Reasonable relocation expenses for the Excepted Service selectee or appointee and his or her immediate family if they relocate to the District of Columbia from outside the Greater Washington Metropolitan Area; and

(C) A reasonable temporary housing allowance, for a period not to exceed 60 days, for the Excepted Service selectee or appointee and his or her immediate family.

(2) In no event shall the sum of pre-employment travel expenses, relocation expenses, and temporary housing allowance exceed \$10,000 or 10% of the appointee's salary, whichever is less.

(h) Within 90 days of September 10, 1999, and notwithstanding any other law or regulation, the Mayor shall submit to the Council for approval under the provisions of § 1-611.06, regulations establishing the Metropolitan Police Department Excepted Service Sworn Employees' Compensation System. Such regulations shall establish policies and procedures governing the compensation, promotion, transfer, and demotion of Metropolitan Police Department excepted service sworn employees appointed pursuant to section § 1-609.03(a)(2).

(Mar. 3, 1979, D.C. Law 2-139, § 903, 25 DCR 5740; Aug. 2, 1983, D.C. Law 5-24, § 12(b), 30 DCR 3341; Feb. 24, 1987, D.C. Law 6-177, § 3(i), 33 DCR 7241; Feb. 28, 1987, D.C. Law 6-205, § 2(b), 34 DCR 670; Aug. 1, 1996, D.C. Law 11-152, § 302(h), 43 DCR 2978; June 10, 1998, D.C. Law 12-124, § 101(h), 45 DCR 2464; Mar. 26, 1999, D.C. Law 12-175, § 302, 45 DCR 7193; Sept. 10, 1999, D.C. Law 13-27, § 2(a), 46 DCR 5315; Mar. 7, 2000, D.C. Law 13-52, § 2, 46 DCR 9911; Oct. 19, 2000, D.C. Law 13-172, § 2402(a), 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, §§ 1002, 1507(a)(2), 3803(b), 48 DCR 6981; Sept. 30, 2004, D.C. Law 15-190, § 3(b), 51 DCR 6737; Apr. 7, 2006, D.C. Law 16-91,

§ 110(c), 52 DCR 10637; June 16, 2006, D.C. Law 16-126, § 3(b), 53 DCR 4709; Mar. 20, 2008, D.C. Law 17-122, § 2(b), 55 DCR 1506; Mar. 14, 2012, D.C. Law 19-115, § 2(d), 59 DCR 461; Apr. 27, 2013, D.C. Law 19-284, § 2(b), 60 DCR 2312.)

Section references. — This section is referenced in § 1-604.06, § 1-608.01a, § 1-609.02, § 1-609.58, § 1-611.11, and § 1-1161.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-284

added (a)(10); redesignated former (a)(10) as (a)(11); and substituted “paragraphs (1) through (10)” for “paragraphs (1) through (9)” in (a)(11).

Legislative history of Law 19-284. — See note to § 1-604.06.

Subchapter X-A. Executive Service.

§ 1-610.52. Executive Service pay schedule.

(a) The Executive Schedule (“DX Schedule”), shall be divided into 5 pay levels and shall be the basic pay schedule for subordinate agency head positions.

(b)(1) The Mayor shall designate the appropriate pay level within the range of the DX Schedule for each subordinate agency head position.

(2) Notwithstanding paragraph (1) of this subsection, the Council approves the existing level of compensation for the positions of the Chief of the Metropolitan Police Department Cathy Lanier (\$253,817), the Chief of the Fire and Emergency Medical Services Department Kenneth Ellerbe (\$187,302), the Chancellor of the District of Columbia Public Schools Kaya Henderson (\$275,000), and the Chief Medical Examiner Dr. Marie Pierre-Louis (\$185,000).

(2A) Notwithstanding paragraph (1) of this subsection, the Council approves the existing level of compensation for the position of Director of the Department of Forensic Sciences Max M. Houck (\$203,125).

(3) The levels of compensation as provided in paragraphs (2) and (2A) of this subsection shall be the total annual salary amount that the present officeholder may receive. The officeholder may not receive longevity pay, bonus pay, including performance bonus pay, retention pay, per annum percentage increases for cost-of-living purposes or due to any collective bargaining activity within the officeholder’s respective agency or department, or any equivalent financial incentives or salary enhancements; provided, that the Chancellor may be paid an additional income allowance of \$12,500, for School Year 2010, in order for the parties to meet the terms and conditions of the November 1, 2010 agreement.

(4) The existing levels of compensation for the positions in paragraphs (2) and (2A) of this subsection shall not be used as the basis for determining the salary of an officeholder in the position of Chief of Police, Fire Chief, Chief Medical Examiner, Chancellor of the District of Columbia Public Schools, who takes office after February 24, 2012, or in the position of Director of the Department of Forensic Sciences, who takes office after June 19, 2013. Each position in paragraphs (2) and (2A) of this subsection shall be subject to compensation within the limits of the DX Schedule, except as provided by this chapter.

(c) Each level shall have a minimum and maximum salary range established by the Mayor, subject to Council review and approval by resolution. Initial salary ranges shall be submitted by the Mayor to the Council for a 60-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 60-day period, the proposed salary ranges shall be deemed approved.

(d) Any subsequent changes to the salary ranges established pursuant to subsection (c) of this section shall be submitted by the Mayor to the Council for a 15-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed changes to the salary ranges by resolution within this 15-day period, the proposed salary ranges shall be deemed approved.

(e) Initial salary ranges and any subsequent changes to the salary ranges shall become effective upon approval and shall be published in the District of Columbia Register for notice purposes within 45 days of their approval.

(Mar. 3, 1979, D.C. Law 2-139, § 1052, as added June 10, 1998, D.C. Law 12-124, § 101(m), 45 DCR 2464; Feb. 24, 2012, D.C. Law 19-83, § 2(a), 58 DCR 11024; June 19, 2013, D.C. Law 19-320, § 501, 60 DCR 3390.)

Section references. — This section is referenced in § 1-301.85, § 5-105.01, § 5-402, § 5-541.01, and § 5-544.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 substituted “paragraphs (2) and (2A)” for “paragraph (2)” throughout (b); added (b)(2A); and added “or in the position of Director of the Department of Forensic Sciences, who takes office after June 19, 2013” in (b)(4).

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Subchapter XV-A. Whistleblower Protection.

§ 1-615.51. Findings and declaration of purpose.

Section references. — This section is referenced in § 2-534.

CASE NOTES

Applied in *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

§ 1-615.52. Definitions.

Section references. — This section is referenced in § 1-615.58.

CASE NOTES

ANALYSIS

Employee.

Protected disclosure, reasonable belief.

Wrongful termination.

Employee.

Pursuant to D.C. Code § 1-615.54(a), the District of Columbia Fraternal Order of Police, not being an “employee” under D.C. Code § 1-615.52(a)(3), was not entitled to bring a cause of action under the District of Columbia Whistle-blower Protection Act, D.C. Code §§ 1-615.51 to 1-615.59. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

Protected disclosure, reasonable belief.

In an action pursuant to the District of Columbia Whistleblower Protection Act, D.C. Code § 1-615.53(a), there was a legally sufficient basis for the jury to find that plaintiff made a protected disclosure, as defined by D.C. Code § 1-615.52(a)(6)(A)-(E), because evidence showed that implementation of defendant’s software was months behind schedule despite significant financial expenditures, and plaintiff testified that the software could not collect meaningful assessment data or implement needed goals. *Williams v. Johnson*, — F. Supp.

2d —, 2012 U.S. Dist. LEXIS 90829 (D.D.C. July 2, 2012).

Wrongful termination.

Police officers failed to establish a valid wrongful termination claim under the District of Columbia Whistle-blower Protection Act, D.C. Code §§ 1-615.51 to 1-615.59, because they did not show a protected disclosure, under D.C. Code § 1-615.52(a)(6), or a prohibited personnel action, under D.C. Code § 1-615.52(a)(5), when (1) although the police officers sought to secure off-duty employment as security guards at a newly opened mall, the District of Columbia’s Metropolitan Police Department (MPD) contracted directly with a mall to provide police officers to staff a security detail at the mall in return for a monthly permit fee; (2) the police officers complained to the chief of police and the mayor that the MPD had acted illegally in obtaining the contract for itself and thereby depriving them of the mall security employment; (3) a local television station broadcast an investigative report about what happened after receiving a letter from the police union’s attorney; and (4) following an investigation, one officer was terminated from the officer’s employment. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

§ 1-615.53. Prohibitions.

Section references. — This section is referenced in § 1-615.54 and § 1-615.55.

CASE NOTES

ANALYSIS

Compliance.

Protected disclosures.

Compliance.

Police officers failed to establish a valid claim under the District of Columbia Whistle-blower Protection Act, D.C. Code §§ 1-615.51 to 1-615.59, because they did not show a protected disclosure, under D.C. Code § 1-615.52(a)(6), or a prohibited personnel action, under D.C. Code § 1-615.52(a)(5), when (1) although the police officers sought to secure off-duty employment as security guards at a newly opened mall, the District of Columbia’s Metropolitan Police Department (MPD) contracted directly with a mall to provide police officers to staff a security detail at the mall in return for a monthly permit fee; (2) the police officers complained to the chief of police and the mayor that the MPD had acted illegally in obtaining the contract for itself and thereby depriving them

of the mall security employment; (3) a local television station broadcast an investigative report about what happened after receiving a letter from the police union’s attorney; and (4) following an investigation, one officer was terminated from the officer’s employment. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

Protected disclosures.

In an action pursuant to the District of Columbia Whistleblower Protection Act, D.C. Code § 1-615.53(a), there was a legally sufficient basis for the jury to find that plaintiff made a protected disclosure because evidence showed that implementation of defendant’s software was months behind schedule despite significant financial expenditures, and plaintiff testified that the software could not collect meaningful assessment data or implement needed goals. *Williams v. Johnson*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90829 (D.D.C. July 2, 2012).

§ 1-615.54. Enforcement.

Section references. — This section is referenced in § 1-615.56.

CASE NOTES

ANALYSIS

Construction.

Evidence.

Construction.

Former probationary teacher, who alleged that he was terminated in retaliation for challenging and complaining about a school policy to alter student test scores, was unable to assert a wrongful termination claim based on a public policy exception to the discharge of an at-will employee because the D.C. Whistleblower Protection Act provided the statutory basis to enforce this particular public policy. *Mpoy v. Fenty*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90960 (D.D.C. July 2, 2012).

Pursuant to D.C. Code § 1-615.54(a), the District of Columbia Fraternal Order of Police, not being an “employee” under D.C. Code § 1-615.52(a)(3), was not entitled to bring a cause of action under the District of Columbia Whistleblower Protection Act, D.C. Code §§ 1-615.51 to 1-615.59. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

Evidence.

Police officers failed to establish a valid claim under the District of Columbia Whistle-blower Protection Act, D.C. Code §§ 1-615.51 to 1-615.59, because they did not show a protected disclosure, under D.C. Code § 1-615.52(a)(6), or a prohibited personnel action, under D.C. Code § 1-615.52(a)(5), when (1) although the police officers sought to secure off-duty employment as security guards at a newly opened mall, the District of Columbia’s Metropolitan Police Department (MPD) contracted directly with a mall to provide police officers to staff a security detail at the mall in return for a monthly permit fee; (2) the police officers complained to the chief of police and the mayor that the MPD had acted illegally in obtaining the contract for itself and thereby depriving them of the mall security employment; (3) a local television station broadcast an investigative report about what happened after receiving a letter from the police union’s attorney; and (4) following an investigation, one officer was terminated from the officer’s employment. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

§ 1-615.55. Disciplinary actions; fine.

CASE NOTES

Parties.

Trial court did not err in dismissing a police commander from a lawsuit because the police officers who brought the lawsuit named the commander as a defendant only in the commander’s official capacity and the lawsuit

against the commander was in reality a lawsuit against the District of Columbia, which also was named as a party-defendant. Thus, it was superfluous to name the commander in the lawsuit. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

§ 1-615.59. Applicability.

CASE NOTES

Applied in *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

Subchapter XVIII. Employee Conduct.

§ 1-618.03. Ethics counselors; codification of advisory opinions. [Repealed].

Repealed.

(Mar. 3, 1979, D.C. Law 2-139, § 1803, 25 DCR 5740; Apr. 23, 1980, D.C. Law 3-58, § 3, 27 DCR 963; Feb. 24, 1987, D.C. Law 6-177, § 3(z), 33 DCR 7241; Aug. 1, 1996, D.C. Law 11-152, § 302(y), 43 DCR 2978; April 27, 2012, D.C. Law 19-124, § 501(c)(5), 59 DCR 1862)

Subchapter XX-B. Mandatory Drug and Alcohol Testing of Certain Employees of the Department of Human Services and the Commission on Mental Health Services.

§ 1-620.24. Implied consent of employees who operate motor vehicles.

Any Department of Mental Health or Department of Human Services employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the provisions of this subchapter, to the testing of the employee's urine or breath, for the purpose of determining drug or alcohol content, whenever a supervisor has the probable cause or a police officer arrests such employee for a violation of § 50-2201.05 or has reasonable grounds to believe such employee to have been operating or in physical control of a motor vehicle within the District while that employee is intoxicated as defined by § 50-2206.01(9), or while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the employee's ability to operate a motor vehicle was impaired by the consumption of intoxicating liquor.

(Mar. 3, 1979, D.C. Law 2-139, § 2024, as added, Apr. 13, 1999, D.C. Law 12-227, § 2, 46 DCR 502; Dec. 18, 2001, D.C. Law 14-56, § 116(a)(6), 48 DCR 7674; Mar. 2, 2007, D.C. Law 16-195, § 4(a), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 304(a), 59 DCR 12957.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "employee is intoxicated as defined by § 50-2206.01(9)" for "employee's alcohol concentration was 0.08 grams or more per 210 liters of breath."

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act

of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Subchapter XX-C. Mandatory Drug and Alcohol Testing for Certain Employees Who Serve Children.

§ 1-620.33. Motor vehicle operators.

Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this subchapter, to the testing of the employee's urine or breath for the purpose of

determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person is intoxicated as defined by § 50-2206.01(9), or while under the influence of an intoxicating liquor or any drug or combination thereof, or while that person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

(Mar. 3, 1979, D.C. Law 2-139, § 2033, as added Apr. 13, 2005, D.C. Law 15-353, § 102, 52 DCR 2331; Mar. 2, 2007, D.C. Law 16-195, § 4(b), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 304(b), 59 DCR 12957.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "person is intoxicated as defined by § 50-2206.01(9)" for "person's alcohol concen-

tration was 0.08 grams or more per 210 liters of breath."

Legislative history of Law 19-266. — See note to § 1-620.24.

Subchapter XXIII. Public Sector Workers' Compensation.

§ 1-623.01. Definitions.

Section references. — This section is referenced in § 1-623.10, § 1-623.18, § 1-623.33, and § 7-2361.11.

CASE NOTES

Exclusivity provision.

Former assistant principal failed to state a claim for which relief could be granted where she alleged wrongful discharge and retaliation claims pursuant to D.C. Code § 32-1542, because the Comprehensive Merit Personnel Act,

D.C. Code § 1-601.01 et seq., provides the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind. *Lewis v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

§ 1-623.02. Compensation for disability or death of employee.

CASE NOTES

Construction with other law.

Former employee (assistant principal) could bring a retaliation claim under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), based upon the employer's failure to file workers' compensation documents on time, because the employee alleged two distinct, different claims that could be pleaded in the alternative with regard to the employer's alleged inaction; even though the Comprehensive

Merit Personnel Act, D.C. Code § 1-601.01 et seq., provided the exclusive remedy for the employee's claim of retaliation because she sought workers' compensation benefits, the employee's claim of retaliation based on her Title VII protected activity arose under Title VII which provided separate grounds for relief for proven retaliation. *Lewis v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

§ 1-623.24. Time for making claim; finding of facts; award; right to hearing; conduct of hearing.

Section references. — This section is referenced in § 1-623.06a, § 1-623.20, § 1-623.27, § 1-623.28, § 1-623.35, § 1-623.42, and § 1-623.44.

CASE NOTES

Construction.

The court declined to treat the 30-day time limit of D.C. Code § 1-623.24(b)(1) as unenforceable: there was no merit to the claimant's argument that she could seek review by filing

an untimely request for reconsideration and then timely seeking review of the denial of the untimely request. *Marsden v. District of Columbia Dep't of Empl. Servs.*, — A.3d —, 2013 D.C. App. LEXIS 1 (Jan. 3, 2013).

Subchapter XXIV. Reductions-in-Force.

§ 1-624.08. Abolishment of positions for fiscal year 2000 and subsequent fiscal years.

Section references. — This section is referenced in § 7-1402.

CASE NOTES

Due process.

In an action in which former employees alleged that the statutory scheme prescribed by the Comprehensive Merit Protection Act, D.C. Code § 1-601.01 et seq., denied the employees an opportunity to be heard after their terminations, the District of Columbia did not violate

the employees' Fifth Amendment procedural due process rights because the employees did not establish that the process available to them was inadequate or that they were denied such process. *Badgett v. Dist. of Columbia*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 25044 (D.D.C. Feb. 25, 2013).

**CHAPTER 9. POLICE OFFICERS, FIRE FIGHTERS, AND TEACHERS
RETIREMENT BENEFIT REPLACEMENT PLAN.**

Subchapter III. Establishment of Replacement Retirement and Disability Benefits Plans

Sec.
1-905.03. Tax treatment of plan.

Subchapter VI. Miscellaneous

Sec.
1-911.03. Alienation of benefits.

Subchapter III. Establishment of Replacement Retirement and Disability Benefits Plans.

§ 1-905.03. Tax treatment of plan.

The replacement plan described in § 1-905.01 shall be deemed a "governmental plan" as defined in section 414(d) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) ("Internal Revenue Code"), which is intended to qualify under section 401(a) of the

Internal Revenue Code, and all benefits provided from the replacement plan shall be deemed governmental plan benefits maintained by the District.

(Sept. 18, 1998, D.C. Law 12-152, § 123, 45 DCR 4045; Oct. 20, 1999, D.C. Law 13-38, § 1002, 46 DCR 6373; May 1, 2013, D.C. Law 19-308, § 2(a), 60 DCR 3386.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-308 rewrote the section.

Temporary Amendment of Section. — Section 2(a) of D.C. Law 19-309 rewrote this section to read as follows:

“The replacement plan described in section 121 shall be deemed a ‘governmental plan’ as defined in section 414(d) of the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.) (‘Internal Revenue Code’), which is intended to qualify under section 401(a) of the Internal Revenue Code, and all benefits provided from the replacement plan shall be deemed governmental plan benefits maintained by the District.”

Section 4(b) of D.C. Law 19-309 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-308. — Law 19-308, the “Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Act of 1998 Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1018. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-675 and transmitted to Congress for its review. D.C. Law 19-308 became effective on May 1, 2013.

Subchapter VI. Miscellaneous.

§ 1-911.03. Alienation of benefits.

Benefits of the retirement programs provided for in this chapter shall not be assigned or alienated, except to the extent expressly permitted by this chapter or by another applicable law and with respect to a domestic relations order that substantially meets all of the requirements of section 414(p) of the Internal Revenue Code, as determined solely by the Retirement Board.

(Sept. 18, 1998, D.C. Law 12-152, § 203, 45 DCR 4045; May 1, 2013, D.C. Law 19-308, § 2(b), 60 DCR 3386.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-308 rewrote the section, which read: “Benefits of the retirement programs provided for herein shall not be assigned or alienated, except to the extent expressly permitted by this chapter or by another applicable law.”

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-309 rewrote this section to read as follows:

“Benefits of the retirement programs provided for in this act shall not be assigned or

alienated, except to the extent expressly permitted by this act or by another applicable law and with respect to a domestic relations order that substantially meets all of the requirements of section 414(p) of the Internal Revenue Code, as determined solely by the Retirement Board.”

Section 4(b) of D.C. Law 19-309 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-308. — See note to § 1-905.03.

CHAPTER 10. ELECTIONS.

Subchapter I. Regulation of Elections

Sec.

1-1001.05. Board of Elections — Duties.

*Subchapter VII. Uniform Military and
Overseas Voters Act*

1-1061.02. Definitions.

*Subchapter I. Regulation of Elections.***§ 1-1001.05. Board of Elections — Duties.**

(a) The Board shall:

(1) Accurately maintain a uniform, interactive computerized voter registration list which shall serve as the official voter registration list for all elections in the District, and shall contain the name, registration information, and a unique identifier assigned for every registered voter in the District. The voter registration list shall be administered pursuant to the Help America Vote Act of 2002 and pertinent federal and local law, and shall be coordinated with other District agency databases;

(2) Take whatever action is necessary and appropriate to actively locate, identify, and register qualified voters;

(3) Conduct elections;

(4) Provide for recording and counting votes by means of ballots or machines or both;

(5) Publish in the District of Columbia Register no later than 45 days before each election held under this subchapter, a fictitious name sample design and layout of the ballot to be used in the election. This requirement shall not apply to any special election to fill a vacancy in an Advisory Neighborhood Commission single-member district;

(6) Publish in 1 or more newspapers of general circulation in the District, a sample copy of the official ballot to be used in any such election, provided, however, nothing contained herein shall require the publication of a sample copy of the official ballots to be used in the advisory neighborhood commissions' elections;

(7) Publish in the District of Columbia Register on the 3rd Friday of every month, the total number of qualified electors registered to vote in the District as of the last day of the month preceding publication. Such notice shall be broken down by ward and political party affiliation, where applicable, and shall list the total number of new registrants, party changes, cancellations, changes of names, and/or addresses processed under each category;

(8) Divide the District into appropriate voting precincts, each of which shall contain at least 350 registered persons; draw precinct lines within election wards created by the Council, subject to the approval of the Council, in whole or in part, by resolution;

(9) Operate polling places;

(10) Provide information regarding procedures for voter registration and absentee ballots to absent uniformed services voters and overseas voters in United States elections, accept valid voter registration applications, absentee ballot applications, and absentee ballots including write-in ballots from all of those voters, and comply with the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1966 (100 Stat. 924; 42 U.S.C. § 1873ff et seq.);

(11) Certify nominees and the results of elections;

(12) Take all reasonable steps to inform all residents and voters of elections and means of casting votes therein;

(13) Repealed;

(14) Issue such regulations and expressly delegate authority to officials and employees of the Board (such delegations of authority only to be effective upon publication in the District of Columbia Register) as are necessary to carry out the purposes of this subchapter, Chapter 11A of this title, subchapter VII of this chapter, and related acts requiring implementation by the Board. The regulations authorized by this paragraph include those necessary to: Determine that candidates meet the statutory qualifications for office; define the form of petitions; establish rules for the circulation and filing of petitions; establish criteria to determine the validity of signatures on petitions; and provide for the registration of any political party seeking to nominate directly candidates in any general or special election;

(15) Take reasonable steps to facilitate voting by blind persons and persons with physical and developmental disabilities, qualified to vote under this subchapter, and to authorize such persons to cast a ballot with the assistance of a person of their own choosing;

(15A) At the request of a candidate, consider what action, if any, should be taken to clarify the identity of a candidate if there is potential for confusion among voters about the identity of a candidate because of the similarity of his or her name to another candidate or elected official;

(16) Perform such other duties as are imposed upon it by this subchapter; and

(17) Perform duties imposed upon it by subchapter VII of this chapter.

(a-1)(1) The Board shall hold regular monthly meetings in accordance with a schedule to be established by the Board. Additional meetings may be called as needed by the Board. Except in the case of an emergency, the Board shall provide at least 48 hours notice of any additional meeting.

(2) The Board shall make available for public inspection and post on its website a proposed agenda for each Board meeting as soon as practicable, but in any event at least 24 hours before a meeting. Copies of the agenda shall be available to the public at the meeting. The Board, according to its rules, may amend the agenda at the meeting.

(3) All meetings of the Board shall be open to the public, unless the members vote to enter into executive session. The Board shall not vote, make resolutions or rulings, or take any actions of any kind during executive session, except those that:

(A) Relate solely to the internal personnel rules or practices of the Board;

(B) Would result in the disclosure of matters specifically exempted from disclosure by statute; provided, that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(C) Would result in the disclosure of trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(D) Involve accusing any person of a crime or formally censuring any person;

(E) Would result in the disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Would result in the disclosure of investigatory records compiled for law enforcement purposes or information which, if written, would be contained in the records, but only to the extent that the production of the records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy; or

(iv) Disclose investigative techniques and procedures; or

(G) Specifically concern the Board's issuance of a subpoena, the Board's participation in a civil action or proceeding, or disposition by the Board of a particular matter involving a determination on the record after opportunity for a hearing.

(4) The Board shall keep the minutes of each meeting of the Board and shall make the minutes of each meeting available to the public for inspection and distribution, and shall post the minutes on the Board's website, as soon as practicable, but in all cases before the next regularly scheduled meeting.

(b)(1) The Board shall, on the 1st Tuesday in April of each presidential election year, conduct a presidential preference primary election within the District of Columbia in which the registered qualified voters therein may express their preference for candidates of each political party of the District of Columbia for nomination for President.

(2) No person shall be listed on the ballot as a candidate for nomination for President in such primary unless there shall have been filed with the Board no later than 90 days before the date of such presidential primary election a petition on behalf of his or her candidacy signed by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1001.07, and of the same political party as the nominee.

(3)(A) Candidates for delegate and alternates where permitted by political party rules to a particular political party national convention convened to nominate that party's candidate for President shall be listed on the ballot of the presidential preference primary held under this subchapter as:

(i) Full slates of candidates for delegates supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such slate's candidacy signed by the candidates on the slate, and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who are registered under § 1-1001.07 and are of the same political party as the candidates on such slate;

(ii) Full slates of candidates for delegates not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such slate's candidacy, signed by the candidates on the slate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidates on such slate;

(iii) An individual candidate for delegate supporting a candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidate; or

(iv) An individual not committed to support any named candidate for nomination for President if there shall have been filed with the Board, no later than 90 days before the date of such presidential primary, a petition on behalf of such candidate, signed by the candidate and by at least 1,000, or 1%, whichever is less, of the qualified electors of the District of Columbia who have registered under § 1-1001.07 and are of the same political party as the candidate.

(B) No candidate for delegate or alternate may be listed on the ballot unless such candidate was properly selected according to the rules of his political party relating to the nomination of candidates for delegate or alternate.

(C) The governing body of each eligible party shall file with the Board, no later than 180 days prior to the presidential preference primary election:

(i) Notification of that party's intent to conduct a presidential preference primary; and

(ii) A plan for the election detailing the procedures to be followed in the selection of individual delegates and alternates to the convention of that party, including procedures for the selection of committed and uncommitted delegates.

(4) The Board shall:

(A) Arrange the ballot for the presidential preference primary so as to enable each voter to indicate his or her choice for presidential nominee and for the slate of delegates and alternates pledged to support that prospective nominee with 1 mark, and provide an alternative to vote for individual delegates or uncommitted slates of delegates; and

(B) Clearly indicate on the ballot the candidate for nomination for President which a slate or candidate for delegate supports, or name of the person who shall manage an uncommitted slate of delegates.

(5) The delegates and alternates, of each political party in the District of Columbia to the national convention of that party convened for the nomination of that party for President, elected in accordance with this subchapter, shall only be obliged to vote for the candidate whom he or she has been selected to represent in accordance with properly promulgated rules of the political party, on the 1st ballot cast at the convention for nominees for President, or until such time as such candidate to whom the delegate is committed withdraws his candidacy, whichever 1st occurs.

(c) Each member of the Board and persons authorized by the Board may administer oaths to persons executing affidavits pursuant to § 1-1001.08. It may provide for the administering of such other oaths as it considers appropriate to require in the performance of its functions.

(d) The Board may permit either persons temporarily absent from the District or persons physically unable to appear personally at an official registration place to register for the purpose of voting in any election held under this subchapter.

(e)(1)(A) The Board shall select, employ, and fix the compensation for an Executive Director and such staff the Board deems necessary, subject to the pay limitations of § 1-611.16. The Executive Director shall serve at the pleasure of the Board. The Board, at the request of the Director of Campaign Finance, shall provide employees, subject to the compensation provisions of this paragraph, as requested to carry out the powers and duties of the Director. Employees assigned to the Director shall, while so assigned, be under the direction and control of the Director and may not be reassigned without the concurrence of the Director.

(B) The Executive Director shall be a District resident throughout his or her term and failure to maintain District residency shall result in a forfeiture of the position.

(C) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the Board unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the Board. An applicant claiming the hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of bona fide residency annually to the director of personnel of the Board for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The Board shall submit to the Mayor and Council annual reports detailing the names of all new employees, their pay schedules, titles, and place of residence.

(2) No provision of this subchapter shall be construed as permitting the Board to appoint any personnel who are not full-time paid employees of the

Board to preliminarily determine alleged violations of the law affecting elections, conflicts of interest, or lobbying.

(3) The Board may appoint a General Counsel to serve at the pleasure of the Board. The General Counsel shall be entitled to receive compensation at the same rate as the Executive Director of the Board and shall be responsible solely to the Board. The General Counsel shall perform such duties as may be delegated or assigned to him or her by rule or order of the Board.

(4)(A) The Board shall select, appoint, and fix the compensation of temporary election workers to operate the polling places, including precinct captains who shall oversee the operations of polling places in accordance with rules prescribed by the Board, and polling place workers who shall assist the precinct captains. Precinct captains shall be qualified registered electors in the District. Polling place workers shall be qualified registered electors in the District; provided, that the Board may also appoint as polling place workers individuals who are at least 16 years of age on the day that they are working in this capacity, who reside in the District of Columbia, and who are enrolled in or have graduated from a public or private secondary school or an institution of higher education. Any polling place worker shall be required to:

- (i) Complete at least 4 hours of training;
- (ii) Receive certification as a polling place worker under standards that the Board shall promulgate; and
- (iii) Take and sign an oath of office to honestly, faithfully, and promptly perform the duties of office.

(B) The Board shall establish standards to measure the performance of polling place workers, including the past performance of a polling place worker, and shall consider the polling place worker's past performance before appointing him or her to work as a polling place worker in a subsequent election.

(f)(1) The Board shall prescribe such regulations as may be necessary to ensure that all persons responsible for the proper administration of this subchapter maintain a position of strict impartiality and refrain from any activity which would imply support or opposition to:

(A) A candidate or group of candidates for office in the District of Columbia; or

(B) Any political party or political committee.

(2) As used in this subsection, the terms "office," "political party," and "political committee" shall have the same meaning as that prescribed in § 1-1161.01.

(g) Notwithstanding provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.), the Board may hear any case brought before it under this subchapter or under Chapter 11A of this title by 1 member panels. An appeal from a decision of any such 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party. If appeal is taken directly to the District of Columbia Court of Appeals, the decision of a 1 member panel shall be, for purposes of such appeal, considered to be a final decision of the Board. If an appeal is taken from a decision of a 1 member panel to the full Board, the decision of the 1 member panel shall be stayed pending a final decision of the

Board. The Board may, upon a vote of the majority of its members, hear de novo all issues of fact or law relating to an appeal of a decision of a 1 member panel, except the Board may decide to consider only the record made before such 1 member panel. A final decision of the full Board, relating to an appeal brought to it from a 1 member panel, shall be appealable to the District of Columbia Court of Appeals in the same manner and to the same extent as all other final decisions of the Board.

(h)(1) The Board, pursuant to regulations of general applicability, shall have the power to:

(A) Require by subpoena the attendance and testimony of witnesses and the production of documents relating to the execution of the Board's duties; and

(B) Order that testimony in any proceeding or investigation be taken by deposition before any person who is designated by the Board, and has the power to administer oaths and, in these instances, to compel the attendance and testimony of witnesses and the production of documents by subpoena.

(2) The Board may petition the Superior Court of the District of Columbia to enforce the subpoena or order, in the case of a refusal to obey a subpoena or order of the Board issued pursuant to this subsection. Any person failing to obey the Court's order may be held in contempt of court.

(i) The Board shall cause the following information to be posted at each polling place on the day of each election for federal office:

(1) A sample version of the ballot that will be used for the election;

(2) The election and the hours during which polling places will be open;

(3) Instructions on the proper manner of completing a ballot, including a special ballot;

(4) Instructions for mail-in registrants and first-time voters under section 303(b) of the Help America Vote Act of 2002 [42 U.S.C. § 15483(b)];

(5) General information on voting rights under applicable federal and District laws, including the right to cast a special ballot and instructions to contact the appropriate officials if these rights are alleged to have been violated, and;

(6) General information on federal and District law regarding prohibitions on acts of voter fraud and misrepresentation.

(j) Not later than 90 days after the date of each regularly scheduled general election for federal office, the Board shall submit to the Mayor a report, in the format established by the United States Election Assistance Commission, on the number of absentee ballots sent to absent uniformed services voters and overseas voters for the election and the number of ballots which were returned by those voters to the Board. The report shall be transmitted by the Mayor to the United States Election Assistance Commission, and shall be made available to the general public.

(k) Within 90 days following a general election, the Board shall publish on its website an after-action report. The report shall include the following information:

(1) The total number of votes cast, broken down by type of ballot, and including the number of spoiled ballots and special ballots that were not counted;

- (2) The number of persons registered:
 - (A) More than 30 days preceding the election;
 - (B) Between 30 days preceding the election and the date of the election;
 and
 - (C) On the date of the election;
- (3) The number of polling place workers, by precinct;
- (4) Copies of any unofficial summary reports generated by the Board on election night;
- (5) A synopsis of any issues identified in precinct captain or area representative logs;
- (6) Performance measurement data of polling place workers;
- (7) A description of any irregularities experienced on election day; and
- (8) Any other information considered relevant by the Board.

(Aug. 12, 1955, 69 Stat. 700, ch. 862, § 5; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87-389, § 1(3), (4), (5), (6); Apr. 22, 1968, 82 Stat. 103, Pub. L. 90-292, § 4(3); Dec. 23, 1971, 85 Stat. 789, Pub. L. 92-220, § 1(5)-(7), (28), (29); Aug. 14, 1973, 87 Stat. 311, Pub. L. 93-92, § 1(2)-(7); Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 13; Dec. 16, 1975, D.C. Law 1-37, § 2(1), (2), 22 DCR 3426; Dec. 16, 1975, D.C. Law 1-38, § 4, 22 DCR 3433; Feb. 17, 1976, D.C. Law 1-45, § 2, 22 DCR 4678; Sept. 2, 1976, D.C. Law 1-79, title I, § 102(5), (6), title V, §§ 502, 503, 23 DCR 2050; Apr. 23, 1977, D.C. Law 1-126, title I, § 103(b), title III, § 301(c)-(f), title IV, § 402, 24 DCR 2372; June 28, 1977, D.C. Law 2-12, § 6(j), 24 DCR 1442; Aug. 18, 1978, D.C. Law 2-101, § 2, 25 DCR 257; Mar. 3, 1979, D.C. Law 2-139, § 3205(v), 25 DCR 5740; Oct. 8, 1981, D.C. Law 4-35, § 3, 28 DCR 3376; Mar. 16, 1982, D.C. Law 4-88, § 2(d), (p), (q), 29 DCR 458; July 1, 1982, D.C. Law 4-120, § 2(a), 29 DCR 2064; Aug. 2, 1983, D.C. Law 5-17, § 5(b), 30 DCR 3196; Oct. 9, 1987, D.C. Law 7-36, § 3, 34 DCR 5321; Mar. 16, 1988, D.C. Law 7-92, § 3(a)-(c), 35 DCR 716; Mar. 11, 1992, D.C. Law 9-75, § 2(a), 39 DCR 310; Oct. 20, 1999, D.C. Law 13-40, § 2, 46 DCR 6550; June 21, 2003, D.C. Law 15-18, § 2(a), 50 DCR 3389; Sept. 30, 2004, D.C. Law 15-188, § 2, 51 DCR 6732; Dec. 7, 2004, D.C. Law 15-218, § 2(b), 51 DCR 9132; Apr. 7, 2006, D.C. Law 16-91, § 127(a), 52 DCR 10637; Apr. 24, 2007, D.C. Law 16-305, § 6(a), 53 DCR 6198; Oct. 18, 2007, D.C. Law 17-26, § 2(b), 54 DCR 8018; Feb. 6, 2008, D.C. Law 17-108, § 205, 54 DCR 10993; Feb. 4, 2010, D.C. Law 18-103, § 2(c), 56 DCR 9169; Mar. 31, 2011, D.C. Law 18-330, § 2(a), 58 DCR 20; June 16, 2011, D.C. Law 19-7, § 2(a), 58 DCR 3882; Apr. 27, 2012, D.C. Law 19-124, § 501(g)(4), 59 DCR 1862; June 5, 2012, D.C. Law 19-137, §§ 121(a), 201(a), 59 DCR 2542.)

Section references. — This section is referenced in § 1-1001.07, § 1-1001.10, § 1-1001.15, and § 1-1001.17.

Subchapter VII. Uniform Military and Overseas Voters Act.

§ 1-1061.02. Definitions.

For the purposes of this subchapter, the term:

(1) "Board" means the Board of Elections and Ethics, established by § 1-1001.03.

(2) "Covered voter" means:

(A) A uniformed-service voter or an overseas voter who is registered to vote in the District;

(B) A uniformed-service voter whose voting residence is in the District and who otherwise satisfies the District's voter eligibility requirements;

(C) An overseas voter who, before leaving the United States, was last eligible to vote in the District and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements;

(D) An overseas voter who, before leaving the United States, would have been last eligible to vote in the District had the voter then been of voting age and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements; or

(E) An overseas voter who was born outside the United States, is not described in subparagraphs (C) or (D) of this paragraph, and, except for a District residency requirement, otherwise satisfies the District's voter eligibility requirements if:

(i) Before leaving the United States, the voter's last place of residence was with a parent or legal guardian who resided within the District; and

(ii) The voter has not previously registered to vote in any other state.

(3) "Dependent" means an individual recognized as a dependent of a uniformed service voter.

(4) "District" means the District of Columbia.

(5) "Federal postcard application" means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 924; 42 U.S.C. § 1973ff(b)(2)).

(6) "Federal write-in absentee ballot" means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, approved August 28, 1986 (100 Stat. 925; 42 U.S.C. § 1973ff-2).

(7) "Military-overseas ballot" means:

(A) A federal write-in absentee ballot;

(B) A ballot specifically prepared or distributed for use by a covered voter in accordance with this subchapter; or

(C) A ballot cast by a covered voter in accordance with this subchapter.

(8) "Overseas voter" means a United States citizen who is outside the United States.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(10) "Uniformed service" means:

(A) Active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

(B) The Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) The National Guard and state militia.

(11) "Uniformed-service voter" means an individual who is qualified to vote and is:

(A) A member of the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States who is on active duty;

(B) A member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

(C) A member on activated status of the National Guard or state militia; or

(D) A spouse or dependent of a member referred to in this paragraph.

(12) "United States," used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(June 5, 2012, D.C. Law 19-137, § 102, 59 DCR 2542.)

Section references. — This section is referenced in § 1-1061.05.

CHAPTER 11A. GOVERNMENT ETHICS AND ACCOUNTABILITY.

Subchapter I. Definitions

Sec.

1-1161.01. Definitions.

Subchapter II. Ethics Act

Part D

Financial Disclosures and Honoraria

1-1162.24. Public reporting.

1-1162.25. Confidential disclosure of financial interest.

Subchapter I. Definitions.

§ 1-1161.01. Definitions.

For the purposes of this chapter, the term:

(1) "Administrative decision" means any activity directly related to action by an executive agency to issue a Mayor's order, to cause to be undertaken a rulemaking proceeding (which does not include a formal public hearing) under Chapter 5 of Title 2, or to propose legislation or make nominations to the Council, the President, or Congress.

(2) "Administrative Procedure Act" means Chapter 5 of Title 2 [§ 2-501 et seq.].

(3) "Affiliated organization" means:

(A) An organization or entity:

(i) In which the employee serves as officer, director, trustee, general partner, or employee;

(ii) In which the employee or member of the employee's household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value; or

(iii) That is a client of the employee or a member of the employee's household; or

(B) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

(4) "Business" means any corporation, partnership, sole proprietorship, firm, nonprofit corporation, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, and any legal entity through which business is conducted, whether for profit or not.

(5) "Business with which he or she is associated" means any business of which the person or member of his or her household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value, and any business that is a client of that person.

(6) "Candidate" means an individual who seeks nomination for election, or election, to office, whether or not the individual is nominated or elected. For the purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if the individual:

(A) Obtained or authorized any other person to obtain nominating petitions to qualify himself or herself for nomination for election, or election, to office;

(B) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about his or her nomination for election, or election, to office; or

(C) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek nomination or election to public office, and is not a candidate. An individual deemed to be a candidate for the purposes of this chapter shall not be deemed, solely by reason of that status, to be a candidate for the purposes of any other law.

(7) "Code of Conduct" means those provisions contained in the following:

(A) The Code of Official Conduct of the Council of the District of Columbia, as adopted by the Council;

(B) Sections 1-618.01 through 1-618.02;

(C) Chapter 7 of Title 2 [§ 2-701 et seq.];

(D) Section 2-354.16;

(E) Chapter 18 of Title 6B of the District of Columbia Municipal Regulations;

(F) Parts C, D, and E of subchapter II, and part F of subchapter III of this chapter for the purpose of enforcement by the Elections Board of violations of § 1-1163.38 that are subject to the penalty provisions of § 1-1162.21.

(8) "Commodity" means commodity as defined in section 1a of the Commodity Exchange Act, approved September 21, 1922 (42 Stat. 998; 7 U.S.C. § 1a).

(9) "Compensation" means any money or an exchange of value received, regardless of its form, by a person acting as a lobbyist.

(10)(A) "Contribution" means

(i) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value, made for the purpose of financing, directly or indirectly,:

(I) The election campaign of a candidate;

(II) Any operations of a political, exploratory, inaugural, transition, or legal defense committee; or

(III) The campaign to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign;

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(iii) A transfer of funds between political committees or between an exploratory committee and a political committee; or

(iv) The payment, by any person other than a candidate or a political, exploratory, inaugural, transition, or legal defense committee, of compensation for the personal services of another person that are rendered to such candidate or committee without charge, or for less than reasonable value, for any such purpose or the furnishing of goods, advertising, or services to a candidate's campaign without charge, or at a rate which is less than the rate normally charged for such services.

(B) Notwithstanding subparagraph (A) of this paragraph, the term "contribution" shall not be construed to include:

(i) Services provided without compensation by a person (including an accountant or an attorney) volunteering a portion or all of the person's time on behalf of a candidate or a political, exploratory, inaugural, transition, or legal defense committee;

(ii) Personal services provided without compensation by a person volunteering a portion or all of the person's time to a candidate or a political, exploratory, inaugural, or legal defense committee;

(iii) Communications by an organization, other than a political party, solely to its members and their families on any subject;

(iv) Communications (including advertisements) to any person on any subject by any organization that is organized solely as an issue-oriented organization, which communications neither endorse nor oppose any candidate for office;

(v) Normal billing credit for a period not exceeding 30 days;

(vi) Services of an informational or polling nature, and related thereto, designed to seek the opinion(s) of voters concerning the possible candidacy of a qualified elector for public office, before such qualified elector's becoming a candidate;

(vii) The use of real or personal property, and the costs of invitations, food, and beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person's residential premises for related activities; provided, that expenses do not exceed \$500 with respect to the candidate's election; and

(viii) The sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if the charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor; provided, that expenses do not exceed \$500 with respect to the candidate's election.

(11) "Direct and predictable effect" means there is:

(A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest;

(B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest; and

(C) The effect is more than de minimis.

(12) "Director of Campaign Finance" means the Director of Campaign Finance of the Elections Board created by § 1-1163.02.

(13) "Director of Government Ethics" means the Director of Government Ethics created by § 1-1162.06.

(14) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(15) "Election" means a primary, general, or special election held in the District of Columbia for the purpose of nominating an individual to be a candidate for election to office, or for the purpose of electing a candidate to office, or for the purpose of deciding an initiative, referendum, or recall measure, and includes a convention or caucus of a political party held for the purpose of nominating such a candidate.

(16) "Election Code" means subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.].

(17) "Elections Board" means the District of Columbia Board of Elections established under the Election Code, and redesignated by § 1-1163.05.

(18) "Employee" means, unless otherwise apparent from the context, a person who performs a function of the District government and who receives compensation for the performance of such services, or a member of a District government board or commission, whether or not for compensation.

(19) "Ethics Board" means the District of Columbia Board of Ethics and Government Accountability established by § 1-1162.02.

(20) "Executive agency" means:

(A) A department, agency, or office in the executive branch of the District government under the direct administrative control of the Mayor;

(B) The State Board of Education or any of its constituent elements;

(C) The University of the District of Columbia or any of its constituent elements;

(D) The Elections Board; and

(E) Any District professional licensing and examining board under the administrative control of the executive branch.

(21)(A) "Expenditure" means:

(i) A purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of financing, directly or indirectly;

(I) The election campaign of a candidate;

(II) Any operations of a political, exploratory, inaugural, transition, or legal defense committee; or

(III) The election campaign to obtain signatures on any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign;

(ii) A contract, promise, or agreement, whether or not legally enforceable, to make an expenditure;

(iii) A transfer of funds between political committees or between an exploratory committee and a political committee; and

(B) Notwithstanding subparagraph (A) of this paragraph, the term "expenditure" shall not be construed to include the incidental expenses (as defined by the Elections Board or Ethics Board) made by or on behalf of a person in the course of volunteering that person's time on behalf of a candidate or a political, exploratory, inaugural, transition, or legal defense committee or the use of real or personal property and the cost of invitations, food, or beverages voluntarily provided by a person to a candidate in rendering voluntary personal services on the person's residential premises for candidate-related activity if the aggregate value of such activities by such person on behalf of any candidate does not exceed \$500 with respect to any election.

(22) "Exploratory committee" means any person, or group of persons, organized for the purpose of examining or exploring the feasibility of becoming a candidate for an elective office in the District.

(23) "Gift" means a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received. The term "gift" shall not include:

(A) A political contribution otherwise reported as required by law;

(B) A commercially reasonable loan made in the ordinary course of business; or

(C) A gift received from a member of the person's immediate family.

(24) "Home Rule Act" means Chapter 2 of this title [§ 1-201.01 et seq.].

(25) "Household" means a public official or employee and any member of his or her immediate family with whom the public official or employee resides.

(26) "Immediate family" means the spouse or domestic partner of a public official or employee and any parent, grandparent, brother, sister, or child of the public official or employee, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

(27) "Inaugural committee" means a person, or group of persons, organized for the purpose of soliciting, accepting, and spending funds and coordinating activities to celebrate the election of a new Mayor.

(28) "Income" means gross income as defined in section 61 of the Internal Revenue Code (26 U.S.C. § 61).

(29) "Internal Revenue Code" means the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 3; 26 U.S.C. § 1 et seq.), and the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.), as amended from time to time.

(30) "Legal defense committee" means a person or group of persons, organized for the purpose of soliciting, accepting, and expending funds to defray the professional fees and costs for a public official's legal defense to one or more civil, criminal, or administrative proceedings.

(31) "Legislative action" includes any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

(32)(A) "Lobbying" means communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision.

(B) The term "lobbying" shall not include:

(i) The appearance or presentation of written testimony by a person on his or her own behalf, or representation by an attorney on behalf of any such person in a rulemaking (which includes a formal public hearing), rate-making, or adjudicatory hearing before an executive agency or the Tax Assessor;

(ii) Information supplied in response to written inquiries by an executive agency, the Council, or any public official;

(iii) Inquiries concerning only the status of specific actions by an executive agency or the Council;

(iv) Testimony given before the Council or a committee of the Council, during which a public record is made of such proceedings or testimony submitted for inclusion in such a public record;

(v) A communication made through the instrumentality of a newspaper, television, or radio of general circulation, or a publication whose primary audience is the organization's membership; and

(vi) Communications by a bona fide political party.

(33)(A) "Lobbyist" means any person who engages in lobbying.

(B) Public officials communicating directly or soliciting others to communicate with other public officials shall not be deemed lobbyists for the purposes of this chapter; provided, that a public official does not receive compensation in addition to his or her salary for such communication or solicitation and makes such communication and solicitation in his or her official capacity.

(34) "Merit Personnel Act" means Chapter 6 of this title [§ 1-601.01 et seq.].

(35) "Office" means the office of Mayor, Attorney General, Chairman of the Council, member of the Council, member of the State Board of Education, or an official of a political party.

(36) "Official in the executive branch" means:

(A) The Mayor;

(B) Any officer or employee in the Executive Service;

(C) Persons employed under the authority of §§ 1-609.01 through 1-609.03 (except § 1-609.03(a)(3)) paid at a rate of DS-13 or above in the

General Schedule or equivalent compensation under the provisions of subchapter XI of Chapter 6 of this title [§ 1-611.01 et seq.] or designated in § 1-609.08 (except paragraphs (9) and (10) of that section; or

(D) Members of boards and commissions designated in § 1-523.01(e).

(37) "Official in the legislative branch" means any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers, and employees of the Council appointed under the authority of §§ 1-609.01 through 1-609.03 or designated in § 1-609.08.

(38) "Official of a political party" means:

(A) National committeemen and national committeewomen;

(B) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States;

(C) Alternates to the officials referred to in subparagraphs (A) and (B) of this paragraph, where permitted by political party rules; and

(D) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District.

(39) "Open Government Office" means the District of Columbia Open Government Office established by § 2-592.

(40) "Open Meetings Act" means subchapter IV of Chapter 5 of Title 2 [§ 2-571 et seq.].

(41) "Particular matter" is limited to meaning a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

(42) "Person" means an individual, partnership, committee, corporation, labor organization, and any other organization.

(43) "Person closely affiliated with the employee" means a spouse, dependent child, general partner, a member of the employee's household, or an affiliated organization.

(44) "Political committee" means any proposer, individual, committee (including a principal campaign committee), club, association, organization, or other group of individuals organized for the purpose of, or engaged in promoting or opposing:

(A) A political party;

(B) The nomination or election of a person to office; or

(C) Any initiative, referendum, or recall.

(45) "Political party" means an association, committee, or organization that nominates a candidate for election to any office and qualifies under subchapter I of Chapter 10 of this title [§ 1-1001.01 et seq.] to have the names of its nominees appear on the election ballot as the candidate of that association, committee, or organization.

(46) "Prohibited source" means any person that:

(A) Has or is seeking to obtain contractual or other business or financial relations with the District government;

(B) Conducts operations or activities that are subject to regulation by the District government;

(C) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

(47) "Public official" means:

- (A) A candidate for nomination for election, or election, to public office;
- (B) The Mayor, Chairman, and each member of the Council of the District of Columbia holding office under Chapter 2 of this title;
- (C) The Attorney General;
- (D) A Representative or Senator elected pursuant to § 1-123;
- (E) An Advisory Neighborhood Commissioner;
- (F) A member of the State Board of Education;
- (G) A person serving as a subordinate agency head in a position designated as within the Executive Service;

(G-1) Members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to § 9-1107.01;

(H) A member of a board or commission listed in § 1-523.01(e); and

(I) A District of Columbia Excepted Service employee paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

(48) "Registrant" means a person who is required to register as a lobbyist under the provisions of § 1-1162.27.

(49) "Security" means a security as defined in section 2(1) of the Securities Act of 1933, approved May 27, 1933 (48 Stat. 74; 15 U.S.C. § 77b(1)).

(50) "Tax" means the taxes imposed under Chapter 1 of the Internal Revenue Code, under Chapter 18 of Title 47, and under the District of Columbia Public Works Act of 1954, approved May 18, 1954 (68 Stat. 101; D.C. Official Codes § 34-2101 passim); and any other provision of law relating to the taxation of property within the District.

(51) "Transactions in securities or commodities" means any acquisition, holding, withholding, use, transfer, or other disposition involving any security or commodity.

(52) "Transition committee" means any person, or group of persons, organized for the purpose of soliciting, accepting, or expending funds for office and personnel transition on behalf of the Chairman of the Council or the Mayor.

(Apr. 27, 2012, D.C. Law 19-124, § 101, 59 DCR 1862; Apr. 27, 2013, D.C. Law 19-286, § 3(a), 60 DCR 2319.)

Section references. — This section is referenced in § 1-1001.02 and § 1-1001.05.

Effect of amendments. — The 2013 amendment by D.C. Law 19-286 added (47)(G-1).

Legislative history of Law 19-286. — Law 19-286, the “Washington Metropolitan Area Transit Authority Board of Directors Act of

2012,” was introduced in Council and assigned Bill No. 19-744. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-653 and transmitted to Congress for its review. D.C. Law 19-286 became effective on April 27, 2013.

Subchapter II. Ethics Act.

PART D.

FINANCIAL DISCLOSURES AND HONORARIA.

§ 1-1162.24. Public reporting.

(a)(1) Public officials, except Advisory Neighborhood Commissioners and members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to § 9-1107.01, shall file annually with the Ethics Board a public report containing a full and complete statement of:

(A) The name of each business entity, including sole proprietorships, partnerships, trusts, nonprofit organizations, and corporations, whether or not transacting any business with the District of Columbia government, in or from which the public official or his or her spouse, domestic partner, or dependent children:

(i) Has a beneficial interest, including, whether held in such person’s own name, in trust, or in the name of a nominee, securities, stocks, stock options, bonds, or trusts, exceeding in the aggregate \$1,000, or that produced income of \$200;

(ii) Receives honoraria and income earned for services rendered in excess of \$200 during a calendar year, as well as the identity of any client for whom the official performed a service in connection with the official’s outside income if the client has a contract with the government of the District of Columbia or the client stands to gain a direct financial benefit from legislation that was pending before the Council during the calendar year. The report required by this part shall include a narrative description of the nature of the service performed in connection with the official’s outside income;

(iii) Serves as an officer, director, partner, employee, consultant, contractor, volunteer, or in any other formal capacity or affiliation; or

(iv) Has an agreement or arrangement for a leave of absence, future employment, including date of agreement, or continuation of payment by a former employer;

(B) Any outstanding individual liability in excess of \$1,000 for borrowing by the public official or his or her spouse, domestic partner, or dependent children from anyone other than a federal or state insured or regulated financial institution, including any revolving credit and installment accounts from any business enterprise regularly engaged in the business of providing

revolving credit or installment accounts, or a member of the person's immediate family;

(C) All real property located in the District (and its actual location) in which the public official or his or her spouse, domestic partner, or dependent children, has an interest with a fair market value in excess of \$1,000, or that produced income of \$200; provided, that this provision shall not apply to personal residences occupied by the public official, his or her spouse, or domestic partner;

(D) All professional or occupational licenses issued by the District of Columbia government held by a public official or his or her spouse, domestic partner, or dependent children;

(E) All gifts received year by a public official from a prohibited source in an aggregate value of \$100 in a calendar;

(F) An affidavit stating that the public official has not caused title to property to be placed in another person or entity for the purposes of avoiding the disclosure requirements of this subsection; and

(G) A certification that the public official has:

(i) Filed and paid his or her income and property taxes;

(ii) Diligently safeguarded the assets of the taxpayers and the District;

(iii) Reported known illegal activity, including attempted bribes, to the appropriate authorities;

(iv) Not been offered or accepted any bribes;

(v) Not directly or indirectly received government funds through illegal or improper means;

(vi) Not raised or received funds in violation of federal or District law; and

(vii) Not received or been given anything of value, including a gift, favor, service, loan gratuity, discount, hospitality, political contribution, or promise of future employment, based on any understanding that the public official's official actions or judgment or vote would be influenced.

(2) The Ethics Board may, on a case-by-case basis, exempt a public official from this requirement or some portion of this requirement for good cause shown.

(b) Except as otherwise provided by this section, all papers filed under this section shall be kept by the Ethics Board in the custody of the Director of Government Ethics for no less than 6 years. The Ethics Board shall publicly disclose before the 2nd day of June each year the names of the candidates, officers, and employees who have filed a report. The Director of Government Ethics shall dispose of papers filed pursuant to this section in accordance with Chapter 17 of Title 2.

(c) Reports required by this section shall be filed before May 15th of each year. If a public official ceases before May 15th to hold the office or position, the occupancy of which imposes upon him or her the reporting requirements set forth in subsection (a) of this section, the public official shall file the report within 3 months after leaving the office or position. The Ethics Board shall publish, in the District of Columbia Register, before June 15th each year, the name of each public official who has:

- (1) Filed a report under this section;
- (2) Sought and received an extension of the deadline filing requirement and the reason for the extension; and

(3) Not filed a report and the reason for not filing, if known.

(d) Reports required by this section shall be in a form prescribed by the Ethics Board. The Ethics Board may provide for the grouping of items of income, sources of income, assets, liabilities, dealings in securities or commodities, and purchases and sales of real property, when separate itemization is not feasible or is not necessary for an accurate disclosure of the income, net worth, dealing in securities and commodities, or purchases and sales of rental property of any individual.

(e) All reports filed under this section shall be maintained by the Ethics Board as public records.

(f) For the purposes of a report required by this section, a person shall be considered to have been a public official if he or she has served as a public official for more than 30 days during any calendar year in a position for which reports are required under this section.

(g) The Ethics Board shall provide for the annual auditing of all reports filed pursuant to this section.

(h) The Mayor shall develop a list of each business entity transacting any business with the District government, or providing a service to the District for consideration, to include the business name, address, principals, and brief summary of the business transacted within the immediately preceding 6 months. The list shall be available online and published on January 1st and July 1st annually.

(Apr. 27, 2012, D.C. Law 19-124, § 224, 59 DCR 1862; Sept. 20, 2012, D.C. Law 19-168, § 1072(a), 59 DCR 8025; Apr. 27, 2013, D.C. Law 19-286, § 3(b), 60 DCR 2319.)

Section references. — This section is referenced in § 1-123, § 1-618.01, § 1-1162.25, and § 38-2973.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-286 added “and members of the Washington Metro-

politan Area Transit Authority Board of Directors appointed pursuant to § 9-1107.01” in (a)(1).

Legislative history of Law 19-286. — See note to § 1-1161.01.

§ 1-1162.25. Confidential disclosure of financial interest.

(a) Any employee, other than a public official, who advises, makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, policy-making, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest, as determined by the appropriate agency head, shall file, before May 15th of each year, with that agency head a report containing a full and complete statement of the information required by § 1-1162.24. Advisory Neighborhood Commissioners and members of the Washington Metropolitan Area Transit Authority Board of Directors appointed pursuant to § 9-1107.01 shall file the report required by this section.

(b) Upon review of the confidential report, any violation of the Code of Conduct found by the agency head shall be forwarded immediately to the Ethics Board for review.

(c) On or before April 15th of each year, each agency head shall designate the persons in the agency required to submit a confidential report by name, position, and grade level, and shall supply this list to the Ethics Board and the D.C. Ethics Counselor on or before May 1st of each year.

(Apr. 27, 2012, D.C. Law 19-124, § 225, 59 DCR 1862; Sept. 20, 2012, D.C. Law 19-168, § 1072(b), 59 DCR 8025; Apr. 27, 2013, D.C. Law 19-286, § 3(c), 60 DCR 2319.)

Section references. — This section is referenced in § 1-618.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-286 added “and members of the Washington Metro-

politan Area Transit Authority Board of Directors appointed pursuant to § 9-1107.01” in (a).

Legislative history of Law 19-286. — See note to § 1-1161.01.

TITLE 2. GOVERNMENT ADMINISTRATION.

Chapter

3A. Government Procurement.

3B. Other Procurement Matters.

12. Business and Economic Development.

14. Human Rights.

18A. Office of Administrative Hearings.

CHAPTER 3A. GOVERNMENT PROCUREMENT.

Subchapter IX. Prohibited Actions; Remedies

Sec.

2-359.07. Debarment and suspension.

Subchapter IX. Prohibited Actions; Remedies.

§ 2-359.07. Debarment and suspension.

(a)(1) After reasonable notice to a person, and reasonable opportunity to be heard:

(A) The CPO shall debar a person from consideration for award of contracts or subcontracts for any conviction under subsection (c)(1) through (3) of this section, for a judicial determination of a violation under subsection (c)(4) of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so or the present responsibility of the person is such that a debarment would not be warranted; and

(B) The CPO may debar a person from consideration for award of contracts or subcontracts if one or more of the causes listed in subsection (b) of this section exist.

(2) The debarment shall not be for a period of more than 5 years.

(b)(1) The CPO shall suspend a person from consideration for award of contracts or subcontracts for any conviction listed in subsection (c)(1) through (3) of this section, for a judicial determination of a violation under subsection (c)(4) or (5) of this section, or for a CPO determination of a violation under subsection (c)(5) through (7) of this section, unless the CPO makes a finding in writing that it would be contrary to the best interests of the District to do so.

(2) The CPO may suspend a person from consideration for award of contracts or subcontracts if the person is charged with the commission of any offense described in subsection (c) of this section and if the CPO makes a finding in writing that such suspension would be in the best interests of the District unless the present responsibility of the person is such that a suspension would not be warranted.

(c) Causes for debarment or suspension include the following:

(1) Conviction for the commission of a criminal offense incident to obtaining, or attempting to obtain, a public or private contract or subcontract or in the performance of the contract or subcontract;

(2) Conviction under this chapter or under any other District, federal, or state law for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity which currently affects the contractor's responsibility as a District government contractor;

(3) Conviction under District, federal, or state antitrust laws arising out of the submission of bids or proposals;

(4) A violation under subchapter I of Chapter 3B of this chapter [§ § 2-381.01 through 2-381.09];

(5) A false assertion of certified business enterprise status or eligibility as defined in subchapter IX-A of Chapter 2 of this title [§ 2-218.01 et seq.];

(6) A violation of contract provisions, as set forth below, of a character which is regarded by the CPO to be sufficiently serious to justify debarment action:

(A) Willful failure, without good cause, to perform in accordance with the specifications or within the time limit provided in the contract; or

(B) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms or conditions of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be bases for debarment;

(6A) A violation of subchapter II of Chapter 13 of Title 32 [§ 32-1331.01 et seq.];

(7) Any other cause the CPO determines to be sufficiently serious and compelling to affect responsibility as a District government contractor, including debarment by another governmental entity for any cause listed in rules; or

(8) Submission of a bid or proposal to contract with an agency or office of the District by a person debarred or suspended pursuant to a conviction under

subsection (c)(1), (2), or (3) of this section, unless the CPO has provided in the submission a written statement to the Chairman of the Council of the compelling reasons to consider the bid or proposal. A second debarment resulting from the submission of a bid or proposal by a debarred person shall result in a permanent debarment pursuant to subsection (k) of this section.

(d)(1) After reasonable notice to a person and reasonable opportunity to be heard, the CPO may debar the person from consideration for award of any contract or subcontract if the CPO receives written notification from the Chairman of the Council or the chairperson of a Council committee that the person has willfully failed to cooperate in a Council or Council committee investigation conducted pursuant to § 1-204.13.

(2) The debarment shall be for a period of 5 years, unless the CPO receives written notification during the 5-year period from the Chairman of the Council or the chairperson of a Council committee that the debarred business has cooperated in the investigation referred to in paragraph (1) of this subsection.

(3) For purpose of this subsection, the term "willfully failed to cooperate" means:

(A) Intentionally failed to attend and give testimony at a public hearing convened in accordance with the Rules of Organization and Procedure for the Council; and

(B) Intentionally failed to provide documents, books, papers, or other information upon request of the Council or a Council committee.

(e) The CPO shall issue a written decision to debar or suspend a person. The decision shall:

(1) State the relevant facts and the reasons for the action taken;

(2) Describe the present responsibility of the person;

(3) Describe whether the debarment is in the best interests of the District; and

(4) Inform the debarred or suspended person of the right to judicial or administrative review as provided in this chapter.

(f) A copy of the decision pursuant to subsection (e) of this section shall be final and conclusive unless fraudulent or unless the debarred or suspended person appeals to the Contract Appeals Board within 60 days of receipt of the CPO's decision by the person.

(g) The filing of an action pursuant to subsection (f) of this section shall not stay the CPO's decision.

(h)(1) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall be effective for all District government agencies.

(2) Unless otherwise indicated in the debarment or suspension decision, the debarment or suspension of a person shall constitute a debarment or suspension of any affiliate of that person.

(i) If a person is charged with or convicted of committing any offense listed in subsection (c)(1) through (5) of this section, the Office of the Attorney General for the District of Columbia or the United States Attorney, whoever is responsible for prosecuting the charge, shall immediately notify the CPO of the charge or conviction and shall provide such information to the CPO as may

otherwise be permitted by law to enable the CPO to take any action authorized by this section. The CPO, in turn, shall immediately notify both the Office of the Attorney General for the District of Columbia and the United States Attorney of any action taken or finding made under this section.

(j)(1) The Office of Contracting and Procurement shall compile and maintain a list of persons who have been debarred or suspended in the District to be known as the "Excluded Parties List," which shall include:

(A) The name and phone number of the OCP official responsible for maintaining the list;

(B) The names and addresses of suspended and debarred persons;

(C) The name of the agency that instituted the suspension or debarment;

(D) The cause of the suspension or debarment; and

(E) The dates and terms of each suspension or debarment.

(2)(A) The Excluded Parties List shall be updated monthly and prominently published on the OCP's website.

(B) Copies of the Excluded Parties List shall be distributed electronically to District contracting officers and contract administrators on a monthly basis.

(C)(i) Bids or proposals received from a person named on the Excluded Parties List shall be rejected unless the CPO provides the person with a written statement before the bid or proposal is submitted stating the compelling reasons why the bid or proposal should be considered. The CPO's determination shall be appended to the bid or proposal submitted.

(ii) If the bid or proposal is awarded to the debarred or suspended person, the award, along with the CPO's determination, shall be prominently published on the OCP's website within 15 days of the issuance of the award and published in the District of Columbia Register as soon as is practicable.

(3) Immediately before the award of a contract, the contracting officer or administrator shall review the most recent version of the Excluded Parties List to ensure that persons being considered for the award are not named on the list. If a person being considered for the award appears on the Excluded Parties List, the contracting officer or administrator shall notify the person in writing that the person's bid or proposal shall be rejected unless the person provides a written statement from the CPO in accordance with sub-subparagraph (i) of this subparagraph within 15 days of receipt of the written notification.

(k) A person who has been debarred 2 times by the District shall be banned permanently from contracting with a District agency or office; provided, that the suspensions leading to debarment resulted from a violation, conviction, or judicial determination listed in subsection (b)(1) of this section but not a charge listed in subsection (b)(2) of this subsection. A permanent ban from contracting with the District bars a person from consideration for award of contracts or subcontracts permanently; provided, that 10 years after the person's debarment, the person may be eligible for reinstatement if the CPO provides written notification to the Chairman of the Council that the person's business practices have been reformed.

(Apr. 8, 2011, D.C. Law 18-371, § 907, 58 DCR 1185; Apr. 27, 2013, D.C. Law 19-298, § 2, 60 DCR 2631; Apr. 27, 2013, D.C. Law 19-300, § 3, 60 DCR 2679.)

Section references. — This section is referenced in § 2-353.02.

Effect of amendments. — The 2013 amendment by D.C. Law 19-298 deleted “or” from the end of (c)(5) and (c)(6)(B); added “or” to the end of (c)(7); added (c)(8); and added (j) and (k).

The 2013 amendment by D.C. Law 19-300 deleted “or” from the end of (c)(6); and added (c)(6A).

Legislative history of Law 19-298. — Law 19-298, the “Bad Actor Debarment and Suspension Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-701. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively.

Returned without signature from the Mayor on Feb. 5, 2013, it was assigned Act No. 19-666 and transmitted to Congress for its review. D.C. Law 19-298 became effective on Apr. 27, 2013.

Legislative history of Law 19-300 — Law 19-300, the “Workplace Fraud Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Returned without the Mayor’s signature on Feb. 11, 2013, it was assigned Act No. 19-668 and transmitted to both Houses of Congress for its review. D.C. Law 19-300 became effective on Apr. 27, 2013.

CHAPTER 3B. OTHER PROCUREMENT MATTERS.

Subchapter I. Procurement Related Claims

Sec.

2-381.09. Penalties for false representations.

Subchapter I. Procurement Related Claims.

§ 2-381.02. False claims liability, treble damages, costs, and civil penalties; exceptions.

Section references. — This section is referenced in § 2-308.14, § 2-381.01, § 2-381.03, § 2-381.05, and § 2-381.10.

CASE NOTES

Failure to state a claim.

As defendants were indeed statutorily exempt from recordation taxes under 12 U.S.C.S. § 1723a(c)(2), plaintiffs’ qui tam action rested on a flawed premise; plaintiffs identified no false statements, nor any “obligation to pay”

the District of Columbia that defendants failed to fulfill, D.C. Code § 2-381.02(a)(7). *Hager v. Federal Nat. Mortg. Ass’n.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 111709 (D.D.C. Aug. 9, 2012).

§ 2-381.09. Penalties for false representations.

Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than \$100,000 for each violation of this chapter. The Attorney General for the District of Columbia

shall prosecute violations of this section. The fine set forth in this section shall not be limited by § 22-3571.01.

(Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Mar. 19, 2013, D.C. Law 19-232, § 2(g), 59 DCR 13632; June 11, 2013, D.C. Law 19-317, § 112(a), 60 DCR 2064.)

Section references. — This section is referenced in § 2-308.21 and § 2-381.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 5. ADMINISTRATIVE PROCEDURE.

Subchapter I. Administrative Procedure.

§ 2-510. Judicial review.

Section references. — This section is referenced in § 2-1403.14, § 2-1831.16, § 3-410, § 3-511, § 3-606, § 3-1205.20, § 4-803, § 7-2045, § 8-113.10, § 8-1021, § 11-722, § 17-303, § 17-305, § 26-704, § 26-706.01, § 26-1204, § 26-1205, § 28-3905, § 31-714, § 31-903, § 31-2103, § 31-2231.23, § 31-2231.24, § 31-2403, § 31-3153, § 31-3931.20, § 31-

5507, § 31-5608.03, § 32-414, § 32-509, § 32-756, § 32-1116, § 32-1117, § 32-1204, § 34-2305, § 41-127, § 42-3405.08, § 42-3405.09, § 44-414, § 44-607, § 44-1003.13, § 46-225.01, § 46-226.03, § 46-226.06, § 47-2853.23, § 48-108.01, § 50-1907, and § 50-2304.05.

CASE NOTES

Remedies.

Delay by the District of Columbia’s Office of Employee Appeals in ruling on former employees’ appeals of their terminations did not violate the employees’ Fifth Amendment procedural due process rights because the employees had state procedural remedies to mitigate the prejudice of delay but failed to employ those safeguards; the employees could have sought a

writ of mandamus compelling agency action under D.C. Ct. App. R. 21, or, under D.C. Code § 2-510(a)(2), the employees could have petitioned the D.C. Court of Appeals to compel agency action unlawfully withheld or unreasonably delayed. *Badgett v. Dist. of Columbia*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 25044 (D.D.C. Feb. 25, 2013).

CHAPTER 12. BUSINESS AND ECONOMIC DEVELOPMENT.

Subchapter VIII. Business Improvement Districts

Part A

General

Sec.

2-1215.15. Collection and disbursement of BID taxes.

Subchapter XI. Assistance for Qualified High Technology Companies

Sec.

2-1221.03. Funds subject to appropriations. [Repealed].

Subchapter VIII. Business Improvement Districts.

PART A.

GENERAL.

§ 2-1215.15. Collection and disbursement of BID taxes.

(a) Within 10 days of its date of registration, and 90 days in advance of the beginning of each fiscal year, each BID shall provide the CFO with a preliminary BID tax roll, which shall include, for each property subject to the relevant BID tax, the square number, the lot number, the name of the BID, the period of time for the BID tax, and the amount of the BID tax for that property for that period of time. In addition to the preliminary tax roll, the BID shall also provide supporting information which describes the information relied upon by the BID in preparing the preliminary tax roll. The supporting information shall be based on information provided to the BID by the Office of Taxation and Revenue and any other reliable source. The preliminary BID tax roll and the supporting information shall be prepared in such form as may be prescribed by regulation by the CFO. In the event that a BID fails to provide the preliminary BID tax roll and the supporting information within the time period specified by this subsection, the BID taxes shall be collected at the time of the next regularly scheduled tax bill.

(b) During a control year, the CFO, and in any other year, the Mayor shall examine the preliminary BID tax roll and backup information and shall make any changes it deems are required by this subchapter. During a control year, the CFO, and in any other year, the Mayor, shall certify a final BID tax roll no later than 30 days prior to the billing dates described in subsection (e) of this section.

(c) Except as otherwise provided by this subchapter, BID taxes shall be collected by the CFO during a control year, and by the Mayor in any other year. Except as otherwise provided by this subchapter, BID taxes shall be collected in the same manner as real property taxes are collected. The CFO during a control year, and the Mayor in any other year, may contract with a financial institution having assets in excess of \$50 million or a BID (if the BID tax is related to such BID) to perform services for the District in connection with the collection and distribution of BID taxes.

(d) BID taxes shall be effective as of the date a BID is registered or deemed registered by the Mayor pursuant to § 2-1215.06, except for BID taxes that become effective pursuant to § 2-1215.04(f) or (g). Any changes to the BID tax adopted pursuant to § 2-1215.08 shall be effective as of the first day of the subsequent fiscal year. BID taxes related to properties affected by a geographic expansion of the BID shall be effective as of the date such an expansion becomes effective pursuant to § 2-1215.09.

(e) BID taxes shall be payable in advance and shall cover the 6 months following the due date of the billing described by paragraph (1) of this subsection; provided however, in the case of the period of time between the effective date of a BID's registration and the last day of the applicable 6-month period, BID taxes shall be payable as described by paragraph (2) of this subsection.

(1) BID taxes shall be due and payable semiannually in 2 equal installments, the first being paid on or before September 15 preceding the real property tax year for the period October 1 through March 31, and the second installment to be paid on or before March 31 of the real property tax year for the period April 1 through September 30.

(2) BID taxes for the period of time between the effective date of a BID's registration and the last day of the applicable 6-month period shall be collected through a special bill, if the relevant BID application requests such a special bill, to be mailed by the District or its contractee within 30 days of the effective date of the BID tax with such special bill due for payment 45 days from the date of such special bill, or if the BID application does not request such a special bill, the BID taxes for such period of time shall be billed at the time of the next practicable regularly scheduled property tax bill pursuant to paragraph (1) of this subsection, along with any other BID taxes collectible at the time of such billing.

(f) If at any time after the dates provided by subsection (e) of this section any BID tax is not paid within the time prescribed, there shall be added to the BID tax a penalty of 10% of the unpaid amount plus interest on the unpaid amount at the rate of 1 ½% per month or portion of a month until the BID tax is paid.

(g) If any BID tax shall remain unpaid after the expiration of 60 days from the date such tax became due, the property subject to such BID tax may be sold at the next ensuing tax sale in the same manner and under the same conditions as property sold for delinquent real property taxes, if such BID taxes with interest and penalties thereon shall not have been paid in full prior to said sale. If an accounting is made in accordance with, and subject to, § 47-1340(f), of the District of Columbia Code, the proceeds from such sale shall be applied towards such delinquent BID taxes together with interest and penalties thereon, including costs associated with such sale; provided, that the proceeds from such sale shall be applied first to any delinquent real property taxes (and penalties and costs associated therewith), and then, to the extent a required accounting is made in accordance with § 47-1340(f), in the following order of priority: any delinquent water and sewer charges; and any delinquent litter control nuisance fines, in accordance, respectively, with §§ 47-1303.4 [47-1303.04], 34-2407.02, 34-211, and 8-807. The proceeds shall then be

applied towards any other delinquent tax, aside from the BID tax, owed by the owner of such property. The proceeds due for such delinquent BID taxes with interest and penalties thereon shall then be delivered to the collection agent for deposit into the relevant special account within 30 business days of its receipt by the District or the BID pursuant to § 2-1215.17.

(h) The Treasurer of the District shall establish a special account of the District for each BID registered pursuant to § 2-1215.06. Each such special account shall be established by the Treasurer within 20 days of the date of the BID's registration pursuant to § 2-1215.06.

(1) Within 10 business days of the date of establishment of any such special account, the Treasurer shall contract with the existing real property tax collection agent of the District to collect the BID taxes and to administer each special account created pursuant to this subsection for such period of time that said tax collection agent is responsible for collecting the real property taxes of the District. Upon the termination of any such contract, the District shall contract with the successor tax collection agent of the District to collect the BID taxes and to administer each special account created pursuant to this subsection for such period of time that said tax collection agent is responsible for collecting the real property taxes of the District. Such transactions shall not be subject to Chapter 2 of this title.

(2) Each special account created pursuant to this section shall consist solely of funds deposited pursuant to this section, which funds shall at no time be commingled with the general fund or any other fund of the District. The following shall be deposited into the special account associated with a BID within 3 business days of its receipt by the collection agent:

(A) All BID taxes collected pursuant to subsections (a) through (e) of this section;

(B) All penalties and interest collected pursuant to subsection (f) of this section; and

(C) Any proceeds from collections pursuant to subsection (g) of this section.

(3) The funds received as payment of a BID tax shall be applied first towards any real property taxes owed and to any delinquent real property taxes (and penalties and costs associated therewith) in the manner described by § 47-1303.04(g), before such payment is applied to the BID tax and any associated penalty and interest.

(i) The District may recover costs from the special accounts only as specifically provided by this subsection. Any recovery of funds from a special account shall be only by payment from the collection agent to the District.

(1) The collection agent shall make a payment to the District equal to the amount of any tax refund associated with such special account that the District documents is required pursuant to District law; provided, that to the extent that a special account lacks the funds needed to make a payment pursuant to this paragraph, the collection agent shall make said payment to the District as soon as sufficient funds are deposited into such special account; provided further, that a BID corporation shall have standing to participate in any administrative proceeding or to intervene in any judicial proceeding for the refund of BID taxes associated with such BID.

(2) The collection agent shall make a monthly accounting to each BID of any payments to the District from the special account associated with that BID.

(j) Each month, prior to the 5th day of the month, the collection agent shall make a payment to the BID associated with the special account, which payment shall consist of all of the funds in such account as of the end of the final day of the preceding calendar month; provided, that the collection agent shall first provide for the payment of costs pursuant to subsection (i) of this section; provided further, that the collection agent shall withhold a portion of such funds, not to exceed 2% of the total annual BID taxes associated with such account when the BID taxes are based on assessed value or $\frac{1}{2}$ of 1% of the total annual BID taxes associated with such account when BID taxes are based on square footage or per building, that the Treasurer of the District finds is needed as a reserve fund to pay any tax refund that may be required pursuant to District law.

(k) Each month, the collection agent shall provide a statement regarding the transactions in such special account to the Treasurer of the District and to the BID associated with such special account.

(l)(1) No funds may be withdrawn from a special account established pursuant to this section except as specifically provided in subsections (i) and (j) of this section. The District and the collection agent shall not pledge the funds in any special account established pursuant to this section under any circumstances, except that the funds in any such account shall be pledged if and when requested by the BID associated with such account as security for bonds or other borrowing by such BID.

(2) Authority to obligate or expend any taxes collected pursuant to this subchapter shall be subject to the appropriations process.

(m) The BID shall be the beneficial owner of the funds in the special account associated with that BID.

(May 29, 1996, D.C. Law 11-134, § 15, 43 DCR 1684; renumbered as § 16, Oct. 8, 1997, D.C. Law 12-26, § 2, 44 DCR 4320; Apr. 12, 2000, D.C. Law 13-91, § 127, 47 DCR 520; Apr. 12, 2000, D.C. Law 13-91, § 127, 47 DCR 520; June 9, 2001, D.C. Law 13-305, § 508(a), 48 DCR 334; Oct. 22, 2012, D.C. Law 19-180, § 2(a), 59 DCR 9421.)

Section references. — This section is referenced in § 2-1215.09 and § 2-1215.17.

Effect of amendments.

D.C. Law 13-305 rewrote the second sentence of subsec. (g) which had read: "The proceeds from such sale shall be applied towards such delinquent BID taxes together with interest and penalties thereon, including costs associated with such sale; provided, that the proceeds from such sale shall be applied first towards

any delinquent real property taxes (and penalties and costs associated therewith), and then towards any delinquent water and sewer charges, and then towards any delinquent litter control nuisance fines, in accordance, respectively, with § 47-1303.04, §§ 34-2407.02 and 34-2110, and § 8-807."

The 2012 amendment by D.C. Law 19-180 rewrote (e)(1).

*Subchapter IX-A. Tax Increment Financing For Retail
Development.*

§ 2-1217.73. Retail Priority Areas.

Section references. — This section is referenced in § 2-1217.74.

Editor's notes.

Section 2 of D.C. Law 19-288 added a subsection (f).

Applicability of D.C. Law 19-288: Section 3 of D.C. Law 19-288 provided that the act shall

apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

*Subchapter XI. Assistance for Qualified High Technology
Companies.*

§ 2-1221.03. Funds subject to appropriations. [Repealed].

Repealed.

(Apr. 3, 2001, D.C. Law 13-256, § 305, 48 DCR 730; Aug. 16, 2008, D.C. Law 17-219, § 7031, 55 DCR 7598.)

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008,” was introduced in Council and assigned Bill No. 17-733. The Bill was adopted on first and second readings on May 6, 2008,

and June 3, 2008, respectively. Signed by the Mayor on June 24, 2008, it was assigned Act No. 17-419 and transmitted to Congress for its review. D.C. Law 17-219 became effective on Aug. 16, 2008.

*Subchapter XIII. District Assumption of Authority of NCRC
and AWC.*

PART A.

REORGANIZATION OF NCRC AND AWC.

§ 2-1225.01. Dissolution of the boards of directors.

CASE NOTES

Applied in *Magdalene Campbell & Fort Lincoln Civic Ass'n v. Fort Lincoln New Town*

Corp., 55 A.3d 379, 2012 D.C. App. LEXIS 499 (2012).

CHAPTER 14. HUMAN RIGHTS.

UNIT A. HUMAN RIGHTS LAW

*Subchapter II. Prohibited Acts of
Discrimination*

Part G

Other Prohibited Practices

Sec.

2-1402.66. Arrest records.

Unit A. Human Rights Law.

Subchapter II. Prohibited Acts of Discrimination.

PART B.

EMPLOYMENT.

§ 2-1402.11. Prohibitions.

Section references. — This section is referenced in § 2-1401.02.

CASE NOTES

ANALYSIS

Discrimination.

—Disability, discrimination.

Hostile work environment.

Termination.

Discrimination.

— **Disability, discrimination.**

Trial court did not err in granting a former employer summary judgment in a former employee's action alleging discrimination based on disability in violation of the District of Columbia Human Rights Act, D.C. Code § 2-1402.11(a)(1) because the trial court properly relied upon federal case law and Equal Employment Opportunity regulations in interpreting the meaning of disability under the Act, D.C. Code § 2-1401.02(5A); under that reasonable interpretation, the employee's foot surgery, for which she reported a recovery period of only a few months and the ability to work from home, did not qualify as a disability. *Wallace v. Eckert*, 57 A.3d 943, 2012 D.C. App. LEXIS 519 (2012).

Hostile work environment.

Former employee's claim that the employee endured a hostile work environment based on age and gender was insufficient since the employee only alleged that a superior called the employee negative and derogatory names which did not rise to the level of harassment, and the employee did not allege any physical threats or interference with the employee's work performance. *Bilal-Edwards v. United Planning Org.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 145619 (D.D.C. Oct. 10, 2012).

Termination.

Trial court properly granted summary judgment in favor of a former employer on a former employee's age, gender, and race discrimination claims because the employer applied the same productivity standard to the employee's peers over a two and one-half month period before determining to discharge the slowest performers; there was no showing that in doing so, the employer relied upon improper discriminatory reasons. *Wallace v. Eckert*, 57 A.3d 943, 2012 D.C. App. LEXIS 519 (2012).

PART G.

OTHER PROHIBITED PRACTICES.

§ 2-1402.66. Arrest records.

(a)(1) An individual may request production of his or her arrest record for the purposes of determining eligibility for sealing or expunging that record pursuant to Chapter 8 of Title 16, or similar sealing statutes in the District or in another jurisdiction, and may request production of his or her arrest record for filing a sealing or expungement motion.

(2) The District may charge the individual a nominal fee for processing this request.

(3) For the purposes of this subsection, an “arrest record” shall contain a listing of all adult arrests, regardless of the disposition of each arrest, and regardless of the date on which the arrest, conviction, or completion of the sentence occurred.

(b)(1)(A) An individual may request production of his or her arrest record or authorize another person to request production of his or her arrest record for any other purpose.

(B) The District may charge the individual a nominal fee for processing this request.

(C) For purposes of this subsection, an “arrest record” shall contain a listing only of adult convictions for which the sentence was completed not more than 10 years before the date on which the records were requested and forfeitures of collateral in a court proceeding that have occurred not more than 10 years before the date on which the record was requested.

(2) A person who requires the production of any arrest record or any copy, extract, or statement thereof pursuant to this subsection, at the monetary expense of any individual to whom such record may relate, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 10 days.

(Dec. 13, 1977, D.C. Law 2-38, title II, § 266, 24 DCR 6038; June 15, 2013, D.C. Law 19-319, § 3, 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 rewrote the section.

Legislative history of Law 19-319. — Law 19-319, the “Re-entry Facilitation Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-889. The Bill was adopted

on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

CHAPTER 18A. OFFICE OF ADMINISTRATIVE HEARINGS.

Sec.

2-1831.03. Jurisdiction of the Office and agency authority to review cases.

§ 2-1831.03. Jurisdiction of the Office and agency authority to review cases.

(a) As of the day that begins the first pay period after 180 days following Council confirmation of the individual who will serve as the first Chief Administrative Law Judge of the Office, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:

- (1) Department of Health;
- (2) Department of Human Services;
- (3) Board of Appeals and Review;
- (4) Repealed;

(5) All adjudicated cases in which a hearing is required to be held pursuant to § 7-2108(a) and 7-2108(b), including licensing and enforcement matters arising under rules issued by the Child and Family Services Agency;

(6) All adjudicated cases required to be heard pursuant to §§ 8-802 and 8-902;

(7) Repealed;

(8) Department of Banking and Financial Institutions;

(9) All adjudications involving infractions of rules established pursuant to subchapter II of Chapter 9A of Title 50 and Chapter 15 of Title 18 of the District of Columbia Municipal Regulations;

(10) All adjudications involving infractions of subchapter II-A of Chapter 10 of Title 6 [§§ 6-1041.01 through 6-1041.09] and the rules promulgated under its authority; and

(11) Adjudications involving infractions of rules established pursuant to subchapter IV of Chapter 9A of title 50 [§ 50-921.71 et seq.].

(b) In addition to those agencies listed in subsection (a) of this section, as of October 1, 2004, this chapter shall apply to adjudicated cases under the jurisdiction of the following agencies:

(1) Department of Employment Services, other than the private workers' compensation function;

(2) Department of Consumer and Regulatory Affairs, except for those cases under the jurisdiction of the Rent Administrator and those cases under the jurisdiction of the Real Property Tax Appeals Commission for the District of Columbia;

(3) Taxicab Commission;

(4) All adjudicated cases of the Office of Tax and Revenue arising from tax protests filed pursuant to § 47-4312; and

(5) All adjudicated enforcement cases brought by the Historic Preservation Office within the Office of Planning.

(b-1)(1) In addition to those agencies listed in subsections (a) and (b) of this section, as of October 1, 2006, this chapter shall apply to adjudicated cases

under the jurisdiction of the Rent Administrator in the Department of Consumer Regulatory Affairs.

(2) In preparation for the transfer of jurisdiction of the Rent Administrator's adjudicatory function to the Office, the Rent Administrator of the Department of Consumer and Regulatory Affairs shall submit a plan to the Mayor and Council by December 31, 2004 describing how the Rent Administrator's office will function after its adjudicatory responsibilities are transferred to the Office, the legislative changes needed to prepare the Rent Administrator for its new role, and the resources needed to maintain its non-adjudicatory functions. The plan shall be developed in consultation with the Office.

(b-2) In addition to those adjudicated cases listed in subsections (a), (b), and (b-1) of this section, as of January 1, 2009, this chapter shall apply to all adjudicated cases involving:

(1) The imposition of a civil fine for violation of firearm registrant requirements pursuant to § 7-2502.09(b) [(b) repealed];

(2) The denial or revocation of a firearm registration certificate pursuant to § 7-2502.10;

(3) The denial or revocation of a dealer license pursuant to § 7-2504.06; and

(4) The imposition of a civil fine for violations of Chapter 10 of Title 7 [§ 7-1001 et seq.], pursuant to § 7-1007.

(b-3) In addition to those cases described in subsections (a), (b), (b-1), and (b-2) of this section, as of May 5, 2010, this chapter shall apply to adjudicated cases required to be heard pursuant to § 42-3141.06.

(b-4) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), and (b-3) of this section, this chapter shall apply to all adjudicated cases involving the impoundment of a vehicle pursuant to § 22-2724(a).

(b-5) This chapter shall apply to appeals pursuant to D.C. Official Code §§ 47-857.09a and 47-859.04a.

(b-6) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), and (b-5) of this section, this chapter shall apply to all adjudicated cases involving the failure to report known or reasonably believed child sexual abuse pursuant to subchapter II-A of Chapter 30 of Title 22 [§ 22-3020.51 et seq.].

(c) Those agencies, boards, and commissions that are not included in subsections (a), (b), (b-1), (b-2), or (b-3) of this section may:

(1) Refer individual cases to the Office, with the approval of the Chief Administrative Law Judge; or

(2) Elect to be covered by this chapter, subject to the approval of the Chief Administrative Law Judge and the Mayor, and upon such terms as the Mayor may set.

(d) Repealed.

(e) Nothing in this chapter shall be construed to grant a right to a hearing not created independently by a constitutional provision or a provision of law other than this chapter, except with regard to the discipline or removal of an Administrative Law Judge or the Chief Administrative Law Judge.

(f) Except as provided in subsection (h) of this section, no agency of the District of Columbia to which this chapter applies shall adjudicate adjudicated cases under the jurisdiction of the Office of Administrative Hearings or employ hearing officers, either full- or part-time, for the purpose of adjudicating cases under the jurisdiction of the Office.

(g) Any case initiated by, or arising from a decision or action of, an agency or a portion of an agency in receivership shall not be heard by the Office unless the receiver has entered a binding agreement that any order issued by the Office in the matter would have the same force, effect, and finality as it would if the receivership did not exist.

(h) Nothing in this chapter shall be construed to limit the authority of an agency covered in subsections (a), (b), (b-1), (b-2), or (b-3) of this section, if the authority exists pursuant to other provisions of the law, to have an agency head or one or more members of the governing board, commission, or body of the agency adjudicate cases falling within its jurisdiction in lieu of the Office. This authority may not be delegated in whole or in part to any subordinate employees of the agency.

(i)(1) A board or commission with authority to issue professional or occupational licenses may delegate to the Office its authority to conduct a hearing and issue an order on the proposed denial, suspension, or revocation of a license or on any proposed disciplinary action against a licensee or applicant for a license. The Office's order shall be appealable to the board or commission pursuant to § 2-1831.16(b).

(2) A case that was delegated by a board or commission to an administrative law judge or hearing examiner employed by an agency subject to this chapter shall be deemed to have been delegated to the Office pursuant to this section as of the date that the agency's adjudicated cases became subject to this chapter.

(j) A person who has filed a protest of a proposed assessment under § 47-4312 and requested a hearing with the Office shall be deemed to have elected adjudication by the Office as the exclusive means of adjudication of all challenges to the proposed assessment, and to have waived any right to adjudication of a challenge to the proposed assessment in any other forum. Nothing in this subsection limits the right of any person to judicial review of an order of the Office pursuant to § 2-1831.16.

(Mar. 6, 2002, D.C. Law 14-76, § 6, 48 DCR 11442; Nov. 13, 2003, D.C. Law 15-39, § 402(b), 50 DCR 5668; Sept. 8, 2004, D.C. Law 15-177, § 2(b), 51 DCR 5709; Dec. 7, 2004, D.C. Law 15-205, § 3502, 51 DCR 8441; Dec. 7, 2004, D.C. Law 15-217, § 3(a), 51 DCR 9126; Apr. 13, 2005, D.C. Law 15-354, §§ 10, 84(c), 86, 52 DCR 2638; Apr. 4, 2006, D.C. Law 16-83, § 2(a), 53 DCR 1059; Mar. 2, 2007, D.C. Law 16-189, § 3, 53 DCR 6786; Mar. 6, 2007, D.C. Law 16-225, § 2, 53 DCR 10232; Mar. 14, 2007, D.C. Law 16-275, § 202, 54 DCR 880; Aug. 15, 2008, D.C. Law 17-216, § 2, 55 DCR 7500; Mar. 25, 2009, D.C. Law 17-353, § 191, 56 DCR 1117; Mar. 31, 2009, D.C. Law 17-372, § 2, 56 DCR 1365; May 22, 2010, D.C. Law 18-146, § 3, 57 DCR 2549; Sept. 18, 2010, D.C. Law 18-219, § 13(a), 57 DCR 4353; Nov. 6, 2010, D.C. Law 18-259, § 3, 57 DCR 5591; Mar.

31, 2011, D.C. Law 18-352, § 3, 58 DCR 744; Apr. 8, 2011, D.C. Law 18-363, § 3(e), 58 DCR 963; Sept. 26, 2012, D.C. Law 19-171, § 26, 59 DCR 6190; Apr. 20, 2013, D.C. Law 19-268, § 2, 60 DCR 1709; June 8, 2013, D.C. Law 19-315, § 3, 60 DCR 1702.)

Section references. — This section is referenced in § 2-1831.16, § 22-3020.54, § 42-3502.04, and § 47-4312.

Effect of amendments.

The 2013 amendment by D.C. Law 19-268 added (a)(11) and made related changes.

The 2013 amendment by D.C. Law 19-315 added (b-6).

Legislative history of Law 19-268. — Law 19-268, the “District Department of Transportation DC Streetcar Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-795. The Bill was adopted on first and second readings on Nov. 15, 2012 and Dec. 4,

2012, respectively. Signed by the Mayor on Jan. 18, 2013, it was assigned Act No. 19-629 and transmitted to Congress for its review. D.C. Law 19-268 became effective on April 20, 2013.

Legislative history of Law 19-315. — Law 19-315, the “Child Sexual Abuse Reporting Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-647. The Bill was adopted on first and second readings on Nov. 15, 2012 and Dec. 4, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-627 and transmitted to Congress for its review. D.C. Law 19-315 became effective on June 8, 2013.

TITLE 3. DISTRICT OF COLUMBIA BOARDS AND COMMISSIONS.

Chapter

- 8. Council on Law Enforcement.
- 9. Criminal Justice Supervisory Board.
- 12. Health Occupations Boards.
- 13A. Motor Vehicle Theft Prevention Commission.

CHAPTER 8. COUNCIL ON LAW ENFORCEMENT.

Sec.

3-801. Created; composition; duties; Chairman; meetings. [Repealed].

§ 3-801. Created; composition; duties; Chairman; meetings. [Repealed].

Repealed.

(June 29, 1953, 67 Stat. 101, ch. 159, § 401; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a), 157(f); June 19, 2013, D.C. Law 19-320, § 513, 60 DCR 3390.)

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4,

2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CHAPTER 9. CRIMINAL JUSTICE SUPERVISORY BOARD.

Sec.

3-901. Definitions. [Repealed].

3-902. Findings; purpose. [Repealed].

3-903. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff. [Repealed].

Sec.

3-904. Meetings; quorums; committees; by-laws. [Repealed].

3-905. Powers and duties. [Repealed].

3-906. Reports. [Repealed].

3-907. Authorization of funds. [Repealed].

§ 3-901. Definitions. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 2, 25 DCR 1391; July 23, 1992, D.C. Law 9-134, § 301(b)(1), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 301(b)(1), 39 DCR 4895; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4,

2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 3-902. Findings; purpose. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 3, 25 DCR 1391; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

§ 3-903. Criminal Justice Supervisory Board and Office of Criminal Justice Plans and Analysis; membership; staff. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 4, 25 DCR 1391; Sept. 28, 1979, D.C. Law 3-24, § 2, 3, 26 DCR 405; July 23, 1992, D.C. Law 9-134, § 301(b)(2), (3), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 301(b)(2), (3), 39 DCR 4895; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

§ 3-904. Meetings; quorums; committees; bylaws. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 5, 25 DCR 1391; Sept. 28, 1979, D.C. Law 3-24, § 4, 26 DCR 405; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

§ 3-905. Powers and duties. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 6, 25 DCR 1391; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

§ 3-906. Reports. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 7, 25 DCR 1391; July 23, 1992, D.C. Law 9-134, § 301(b)(4), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 301(b)(4), 39 DCR 4895; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

§ 3-907. Authorization of funds. [Repealed].

Repealed.

(Sept. 13, 1978, D.C. Law 2-107, § 8, 25 DCR 1391; July 23, 1992, D.C. Law 9-134, § 301(b)(5), 39 DCR 4066; Sept. 10, 1992, D.C. Law 9-145, § 301(b)(5), 39 DCR 4895; June 19, 2013, D.C. Law 19-320, § 514, 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-901.

CHAPTER 12. HEALTH OCCUPATIONS BOARDS.

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§ 3-1202.08 DISTRICT OF COLUMBIA BOARDS AND COMMISSIONS

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*Subchapter II. Establishment of Health Occupation Boards and
Advisory Committees; Membership; Terms.*

§ 3-1202.08. Board of Pharmacy.

(a) There is established a Board of Pharmacy to consist of 7 members appointed by the Mayor.

(b)(1) The Board shall regulate the practice of pharmacy, the practice of pharmaceutical detailing, and the practice of pharmacy technicians.

(2) The Board is authorized to:

(A) Establish a code of ethics for the practice of pharmaceutical detailing; and

(B) Collect information from licensed pharmaceutical detailers relating to their communications with licensed health professionals, or with employees or representatives of licensed health professionals, located in the District.

(c) Of the members of the Board, 5 shall be pharmacists licensed in the District and 2 shall be consumer members.

(d) Except as provided in subsection (e) of this section, members of the Board shall be appointed for terms of 3 years.

(e) Of the members initially appointed under this section, 2 shall be appointed for a term of 1 year, 2 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years.

(f) An individual licensed to practice pharmacy pursuant to this chapter may administer immunizations and vaccinations only if certified to do so by the Board and only pursuant to a written protocol and valid prescription or standing order of a physician.

(g) The Board and the Board of Medicine shall jointly develop and promulgate regulations to implement and regulate the administration of vaccinations and immunizations by pharmacists and to authorize pharmacists certified to administer vaccinations and immunizations to administer emergency anaphylactic reaction treatment pursuant to an approved physician-pharmacist protocol.

(h)(1) A licensed pharmacist may initiate, modify, or discontinue a drug therapy regimen pursuant to a collaborative practice agreement with a licensed physician, or, pursuant to § 3-1204.12, other health practitioner.

(2) The Board and the Board of Medicine shall jointly develop and issue regulations governing the implementation and use of collaborative practice agreements between a licensed pharmacist and a licensed physician. At minimum, the regulations shall:

(A) Require that all collaborative practice agreements include:

(i) Specification of the drug therapy to be provided and any tests that may be necessarily incident to its provision;

(ii) The conditions for initiating, modifying, or discontinuing a drug therapy; and

(iii) Directions concerning the monitoring of a drug therapy, including the conditions that would warrant a modification to the dose, dosage regime, or dosage form of the drug therapy; and

(B) Establish policies and procedures for approving, disapproving, and revoking collaborative practice agreements.

(Mar. 25, 1986, D.C. Law 6-99, § 208, 33 DCR 729; Mar. 26, 2008, D.C. Law 17-131, § 102(c), 55 DCR 1659; Mar. 20, 2009, D.C. Law 17-306, § 2(b), 56 DCR 23; Oct. 22, 2012, D.C. Law 19-185, § 2(b), 59 DCR 9454; May 1, 2013, D.C. Law 19-303, § 2(b), 60 DCR 2711.)

Section references. — This section is referenced in § 1-523.01 and § 3-1207.42.

Effect of amendments.

The 2013 amendment by D.C. Law 19-303 added “and the practice of pharmacy technicians” in (b)(1); and made a related change.

Legislative history of Law 19-303. — Law 19-303, the “Pharmacy Technician Amendment

Act of 2012,” was introduced in Council and assigned Bill No. 19-293. The Bill was adopted on first and second readings on December 4, 2012 and December 18, 2012, respectively. Signed by the Mayor on February 5, 2013, it was assigned Act No. 19-670 and transmitted to Congress for its review. D.C. Law 19-303 became effective on May 1, 2013.

Subchapter V. Licensing, Registration, or Certification of Health Professionals.

§ 3-1205.01. License, registration, or certification required.

(a) A license issued pursuant to this chapter is required to practice medicine, acupuncture, chiropractic, registered nursing, practical nursing, dentistry, dental hygiene, dietetics, marriage and family therapy, massage therapy, naturopathic medicine, nutrition, nursing home administration, occupational therapy, optometry, pharmaceutical detailing, pharmacy, physical therapy, podiatry, psychology, social work, professional counseling, audiology, speech-language pathology, respiratory care, advanced practice addiction counseling, or to practice as an anesthesiologist assistant, physician assistant, physical therapy assistant, polysomnographic technologist, occupational therapy assistant, or surgical assistant in the District, except as otherwise provided in this chapter. Registration is required to practice as nursing assistive personnel, or as a psychology associate, polysomnographic technician or trainee, dental assistant, or pharmacy technician or trainee. Certification is required to practice as an addiction counselor I, or an addiction counselor II, and to practice advanced practice registered nursing.

(b) A license, registration, or certification is the property of the District of Columbia and shall be surrendered on demand of the licenser.

(Mar. 25, 1986, D.C. Law 6-99, § 501, 33 DCR 729; July 22, 1992, D.C. Law 9-126, § 2(f), 39 DCR 3824; Mar. 14, 1995, D.C. Law 10-203, § 2(e), 41 DCR 7707; Mar. 14, 1995, D.C. Law 10-205, § 2(d), 41 DCR 7712; Mar. 23, 1995, D.C. Law 10-247, § 2(h), 42 DCR 457; Mar. 10, 2004, D.C. Law 15-88, § 2(g),

50 DCR 10999; July 8, 2004, D.C. Law 15-172, § 2(e), 51 DCR 4938; Mar. 16, 2005, D.C. Law 15-237, § 2(f), 51 DCR 10593; Mar. 6, 2007, D.C. Law 16-219, § 2(f), 53 DCR 10211; Mar. 6, 2007, D.C. Law 16-220, § 2(c), 53 DCR 10216; Mar. 6, 2007, D.C. Law 16-228, § 2(f), 53 DCR 10244; Mar. 26, 2008, D.C. Law 17-131, § 102(e), 55 DCR 1659; July 18, 2009, D.C. Law 18-26, § 2(e)(2), 56 DCR 4043; May 1, 2013, D.C. Law 19-303, § 2(c), 60 DCR 2711.)

Section references. — This section is referenced in § 16-2301, § 21-501, and § 21-2202.

Effect of amendments.

The 2013 amendment by D.C. Law 19-303

substituted “dental assistant, or pharmacy technician or trainee” for “or dental assistant” in (a).

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1205.24. Council approval of massage therapy regulations directed at licensed therapist facilities.

There shall be no regulation of massage therapy that is directed at regulating a licensed therapist facility without affirmative approval by the Council of the District of Columbia.

(Mar. 25, 1986, D.C. Law 6-99, § 524, as added June 19, 2013, D.C. Law 19-320, § 502, 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added this section.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was

adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Subchapter VII-E. Registered Pharmacy Technicians.

§ 3-1207.51. Definitions.

For the purposes of this subchapter, the term:

(1) “Board” means the Board of Pharmacy.

(2) “Direct supervision” means, with respect to the supervision of a pharmacy technician or pharmacy technician trainee, that a licensed pharmacist is:

(A) Physically present at the same pharmacy as the pharmacy technician or pharmacy technician trainee and in the general vicinity of the pharmacy technician or pharmacy technician trainee;

(B) Readily available to answer questions of the pharmacy technician or pharmacy technician trainee;

(C) Making appropriate in-process and end-process verifications of the activities of the pharmacy technician or pharmacy technician trainee; and

(D) Fully responsible for the practice of the pharmacy technician or pharmacy technician trainee.

(3) “Pharmacy technician trainee” means a person enrolled in a Board-approved training program who may perform the duties of a registered

pharmacy technician under the direct supervision of a pharmacist in a licensed pharmacy in the District.

(4) "Registered pharmacy technician" means a person who is registered with the Board as a pharmacy technician.

(Mar. 25, 1986, D.C. Law 6-99, § 751, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this subchapter. **Legislative history of Law 19-303.** — See note to § 3-1202.08.

§ 3-1207.52. Registration.

(a) Except as provided in § 3-1207.54 and subsection (d) of this section, a person shall not engage in practice as a pharmacy technician in the District unless the person holds a valid registration issued by the Board and practices under the direct supervision of a person licensed to practice pharmacy under this chapter.

(b) To be eligible for registration as a pharmacy technician, a person shall provide proof acceptable to the Board that he or she has:

(1) A high school diploma or its equivalent, or has passed a Board-approved examination that proves that he or she has achieved competency in the educational skills required to perform the function of a pharmacy technician; and

(2)(A) A current certification from the Pharmacy Technician Certification Board, the National Healthcareer Association, or another national or state certifying organization approved by the Board; or

(B) Successfully completed one of the following types of pharmacy training programs, which shall include a Board-approved exam:

(i) A national, regional, or state accredited pharmacy technician training program recognized by the Board;

(ii) A pharmacy technician program at a college or university that is accredited by an accrediting body recognized by the Secretary of the United States Department of Education or the Council on Postsecondary Accreditation;

(iii) An employer-based pharmacy technician training program recognized by the Board that includes within a one-year period a minimum of 160 hours of training, including theoretical and practical instruction; or

(iv) A pharmacy technician program that meets the guidelines of the American Society of Health-System Pharmacists, is licensed by the District of Columbia Educational Licensure Commission, and has certified to the Board its intent to pursue accreditation upon becoming eligible to do so.

(c) Notwithstanding subsection (b) of this section, for a period of one year after the effective date of rules issued pursuant to § 3-1207.58, a person who does not meet the requirements for registration under subsection (b) of this section shall be eligible for registration as a pharmacy technician if:

(1) The person is at least 17 years of age;

(2) The person submits proof, acceptable to the Board, that he or she has worked as a pharmacy technician for at least the 24 months immediately before May 1, 2013; and

(3) A licensed pharmacist who has supervised the applicant for at least the 6 months immediately before the date the person applies for registration attests in writing that the person has competently performed the functions of a pharmacy technician.

(d) Notwithstanding subsection (a) of this section, for a period of one year after the effective date of the rules issued pursuant to § 3-1207.58, a person who is not eligible for registration under subsection (b) or (c) of this section may engage in practice as a pharmacy technician if the person:

(1) Has received training to competently and safely perform the tasks assigned; and

(2) Engages in the practice as a pharmacy technician under the direct supervision of a pharmacist licensed under this chapter.

(Mar. 25, 1986, D.C. Law 6-99, § 752, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Section references. — This section is referenced in § 3-1207.56.

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.53. Identification.

A registered pharmacy technician shall wear a name tag bearing the title “registered pharmacy technician” and display his or her current registration in a conspicuous place in the pharmacy in which he or she is employed.

(Mar. 25, 1986, D.C. Law 6-99, § 753, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.54. Trainees.

(a) The Board shall issue rules regulating the duties and scope of the practice of pharmacy technician trainees.

(b) The Board, through rulemaking, may require that pharmacy technician trainees register with the Board.

(c) A pharmacy technician trainee shall not use a title other than pharmacy technician trainee and shall wear a name tag bearing the title “pharmacy technician trainee”.

(Mar. 25, 1986, D.C. Law 6-99, § 754, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Section references. — This section is referenced in § 3-1207.52.

Effect of amendments. — The 2013 amendment by D.C. Law 19-303, added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.55. Authorized services.

(a) A registered pharmacy technician may provide technical pharmacy-related services, as defined through rulemaking, that do not require professional judgment regarding the preparation and distribution of drugs if the technical services are provided under the direct supervision of a pharmacist licensed under this chapter.

(b) Notwithstanding subsection (a) of this section, a registered pharmacy technician shall not provide the following services:

- (1) Drug regimen review;
- (2) Clinical conflict resolution;
- (3) Prescriber contact, except for receiving authorization of prescription refills;
- (4) Therapy modification;
- (5) Patient counseling;
- (6) Dispensing process validation;
- (7) Vaccination or immunization administration;
- (8) Receiving a new prescription drug order over the telephone;
- (9) Any activity required by law or regulation to be performed only by a pharmacist; or
- (10) Any activity for which professional pharmaceutical judgment is required.

(Mar. 25, 1986, D.C. Law 6-99, § 755, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.56. Waiver of requirements.

The Board shall waive the educational and examination requirements under § 3-1207.52(b) for any applicant for registration or registration renewal who can demonstrate to the satisfaction of the Board that he or she has been performing the function of a pharmacy technician on a full-time or substantially full-time basis continually for at least 24 months immediately preceding May 1, 2013, and is qualified to do so on the basis of pertinent education, training, experience, and demonstrated current experience; provided, that the application is made within 24 months of May 1, 2013.

(Mar. 25, 1986, D.C. Law 6-99, § 756, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

§ 3-1207.57 DISTRICT OF COLUMBIA BOARDS AND COMMISSIONS

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.57. Other pharmacy-related services.

(a) Unless otherwise authorized by the Board, an individual who works at a pharmacy and is not licensed or registered by the Board as a pharmacist or pharmacy intern or authorized to perform the services of a pharmacy technician under this chapter, may perform only ancillary pharmacy services, such as:

- (1) Cashiering;
- (2) Bookkeeping;
- (3) Pricing;
- (4) Stocking;
- (5) Delivering;
- (6) Answering nonprofessional telephone inquiries; and
- (7) Documenting third-party reimbursement.

(b) An individual who is not licensed or registered by the Board as a pharmacist or pharmacy intern or authorized to perform the services of a pharmacy technician under this chapter shall not perform the tasks of a:

- (1) Pharmacist;
- (2) Pharmacy intern;
- (3) Pharmacy technician; or
- (4) Pharmacy technician trainee.

(Mar. 25, 1986, D.C. Law 6-99, § 757, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

Legislative history of Law 19-303. — See note to § 3-1202.08.

§ 3-1207.58. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this subchapter.

(Mar. 25, 1986, D.C. Law 6-99, § 758, as added May 1, 2013, D.C. Law 19-303, § 2(d), 60 DCR 2711.)

Section references. — This section is referenced in § 3-1207.52.

Legislative history of Law 19-303. — See note to § 3-1202.08.

Effect of amendments. — The 2013 amendment by D.C. Law 19-303 added this section.

*Subchapter X. Prohibited Acts; Penalties; Injunctions.***§ 3-1210.03. Certain representations prohibited.**

(a) Unless authorized to practice acupuncture under this chapter, a person shall not use or imply the use of the words or terms "acupuncture," "acupuncturist," or any similar title or description of services with the intent to represent that the person practices acupuncture.

(b) Unless authorized to practice as an advanced practice registered nurse under this chapter, a person shall not use or imply the use of the words or terms "advanced practice registered nurse", "A.P.R.N.", "certified registered nurse anesthetist", "C.R.N.A.", "certified nurse midwife", "C.N.M.", "clinical nurse specialist", "C.N.S.", "nurse practitioner", "N.P.", or any similar title or description of services with the intent to represent that the person practices advanced registered nursing.

(c) Unless authorized to practice chiropractic under this chapter, a person shall not use or imply the use of the words or terms "chiropractic," "chiropractic physician," "chiropractic orthopedist," "chiropractic neurologist," "chiropractic radiologist," "chiropractor," "Doctor of Chiropractic," "D.C.", or any similar title or description of services with the intent to represent that the person practices chiropractic.

(d) Unless authorized to practice dentistry under this chapter, a person shall not use or imply the use of the words or terms "dentistry," "dentist," "D.D.S.", "D.M.D.", "endodontist," "oral surgeon," "maxillofacial surgeon," "oral pathologist," "orthodontist," "pedodontist," "periodontist," "prosthodontist," "public health dentist," or any similar title or description of services with the intent to represent that the person practices dentistry.

(e) Unless authorized to practice dentistry or dental hygiene under this chapter, a person shall not use or imply the use of the words or terms "dental hygiene," "dental hygienist," or similar title or description of services with the intent to represent that the person practices dental hygiene.

(f) Unless authorized to practice dietetics or nutrition under this chapter, a person shall not use or imply the use of the words or terms "dietitian/nutritionist," "licensed dietitian," "licensed nutritionist," "dietitian," "nutritionist," "L.D.N.", "L.D.", "L.N.", or any similar title or description of services with the intent to represent that the person practices dietetics or nutrition.

(g) Unless authorized to practice medicine under this chapter, a person shall not use or imply the use of the words or terms "physician," "surgeon," "medical doctor," "doctor of osteopathy," "M.D.", "anesthesiologist," "cardiologist," "dermatologist," "endocrinologist," "gastroenterologist," "general practitioner," "gynecologist," "hematologist," "internist," "laryngologist," "nephrologist," "neurologist," "obstetrician," "oncologist," "ophthalmologist," "orthopedic surgeon," "orthopedist," "osteopath," "otologist," "otolaryngologist," "otorhinolaryngologist," "pathologist," "pediatrician," "primary care physician," "proctologist," "psychiatrist," "radiologist," "rheumatologist," "rhinologist," "urologist," or any similar title or description of services with the intent to represent that the person practices medicine.

(h) Unless authorized to practice nursing home administration under this chapter, a person shall not use the words or terms "nursing home administration," "nursing home administrator," "N.H.A.", or any similar title or description of services with the intent to represent that the person practices nursing home administration.

(i) Unless authorized to practice occupational therapy under this chapter, a person shall not use the words or terms "occupational therapy," "occupational therapist," "licensed occupational therapist," "O.T.", "O.T.R.", "L.O.T.", "O.T.R/L.", or any similar title or description of services with the intent to represent that the person practices occupational therapy.

(j) Unless authorized to practice as an occupational therapy assistant under this chapter, a person shall not use the words or terms "occupational therapy assistant," "licensed occupational therapy assistant," "certified occupational therapy assistant," "O.T.A.", "L.O.T.A.", "C.O.T.A.", "O.T.A.L.", or any similar title or description of services with the intent to represent that the person practices as an occupational assistant.

(k) Unless authorized to practice optometry under this chapter, a person shall not use the words or terms "optometry," "optometrist," "Doctor of Optometry," "contactologist," "O.D.", or any similar title or description of services with the intent to represent that the person practices optometry.

(l) Unless authorized to practice pharmacy under this chapter, a person shall not use the words or terms "pharmacy," "pharmacist," "druggist," "registered pharmacist," "R.Ph.", "Ph.G.", or any similar title or description of services with the intent to represent that the person practices pharmacy.

(l-1) Unless authorized to practice as a registered pharmacy technician under this chapter, a person shall not use or imply the use of the words or terms "registered pharmacy technician", "certified pharmacy technician", "pharmacy technician", "R.Ph.T.", "C.Ph.T.", "Ph.T.", or any similar title or description of services with the intent to represent that the person practices as a registered pharmacy technician.

(m) Unless authorized to practice physical therapy under this chapter, a person shall not use the words or terms "physical therapy," "physical therapist," "physiotherapist," "physical therapy technician," "P.T.", "L.P.T.", "R.P.T.", "P.T.T.", or any similar title or description of services with the intent to represent that the person practices physical therapy.

(m-1) Unless authorized to practice as a physical therapy assistant under this chapter, a person shall not use or imply the use of the words or terms "physical therapy assistant", "licensed physical therapy assistant", "certified physical therapy assistant", "P.T.A.", "L.P.T.A.", "C.P.T.A.", or any similar title or description of services with the intent to represent that the person practices as a physical therapy assistant.

(n) Unless authorized to practice as a physician assistant under this chapter, a person shall not use or imply the use of the words or terms "physician assistant," "P.A.", "surgeon's assistant," or any similar title or description of services with the intent to represent that the person practices as a physician assistant.

(o) Unless authorized to practice podiatry under this chapter, a person shall not use the words or terms "podiatry," "podiatrist," "podiatric," "foot specialist,"

“foot correctionist,” “foot expert,” “practipedist,” “podologist,” “D.P.M.”, or any similar title or description of services with the intent to represent that the person practices podiatry.

(p) Unless authorized to practice practical nursing under this chapter, a person shall not use the words or terms “practical nurse,” “licensed practical nurse,” “L.P.N.”, or any similar title or description of services with the intent to represent that the person practices practical nursing.

(q) Unless authorized to practice psychology under this chapter, a person shall not use the words or terms “psychology,” “psychologist”, “psychology associate”, or similar title or description of services with the intent to represent that the person practices psychology.

(r) Unless authorized to practice registered nursing under this chapter, a person shall not use the words or terms “registered nurse,” “certified nurse,” “graduate nurse,” “trained nurse,” “R.N.”, or any similar title or description of services with the intent to represent that the person practices registered nursing.

(s) Unless authorized to practice social work under this chapter, a person shall not use the words or terms “social worker,” “clinical social worker,” “graduate social worker,” “independent social worker,” “licensed independent social worker,” “L.I.S.W.”, “licensed independent clinical social worker,” “L.I.C.S.W.”, or any similar title or description of services with the intent to represent that the person practices social work.

(t) Unless authorized to practice professional counseling pursuant to this chapter, a person shall not use the phrase “licensed professional counselor” or “licensed graduate professional counselor”, or any similar title or description of services with the intent to represent that the person practices professional counseling. Nothing in this subsection shall restrict the use of the generic terms “counseling” or “counselor”.

(u) Unless authorized to practice respiratory care pursuant to this chapter, a person shall not use the phrase “licensed respiratory care practitioner” or any similar title or description of services with the intent to represent that the person is a respiratory care practitioner.

(v) Unless authorized to practice massage therapy under this chapter, a person shall not use or imply the use of the words or terms “massage therapy”, “therapeutic massage”, “myotherapy”, “bodyrub”, or similar title or description of services, or the initials “LMT”, with the intent to represent that the person practices massage.

(w) Unless authorized to practice marriage and family therapy under this chapter, a person shall not use or imply the use of the words or terms “marriage and family therapist” or “MFT”, or any similar title or description of services, with the intent to represent that the person practices marriage and family therapy.

(x) Unless authorized to practice naturopathic medicine under this chapter, a person shall not use the words or terms “Doctor of Naturopathic Medicine”, “Naturopathic Physician”, “Licensed Naturopath”, “Naturopathic Doctor”, “Doctor of Naturopathy”, “ND”, or “NMD”, or any similar title or description of services, with the intent to represent that the person practices naturopathic medicine.

(y) Unless authorized to practice as an anesthesiologist assistant under this chapter, a person shall not use or imply the use of the words or terms "anesthesiologist assistant," or "A.A.," or any similar title or description of services with the intent to represent that the person practices as an anesthesiologist assistant.

(z) Unless authorized to practice audiology or speech-language pathology pursuant to this chapter, a person shall not advertise the performance of audiology or speech-language; use a title or description such as "audiological," "audiologist," "audiology," "hearing clinic," "hearing clinician," "hearing or aural rehabilitation," "hearing specialist," "communication disorders," "communicologist," "language pathologist," "logopedist," "speech and language clinician," "speech and language therapist," "speech clinic," "speech clinician," "speech correction," "speech correctionist," "speech pathology," "speech-language pathology," "speech therapist," or "speech therapy," or any other name, style, or description denoting that the person is an audiologist or speech-language pathologist or practicing audiology or speech-language pathology.

(aa) Unless authorized to practice as a surgical assistant under this chapter, a person shall not use or imply the use of the words or terms "surgical assistant," or "S.A.," or any similar title or description of services with the intent to represent that the person practices as a surgical assistant.

(bb) Unless authorized to practice addiction counseling under this chapter, a person shall not use or imply the use of the words or terms "addiction counselor", "licensed addiction counselor", "supervised addiction counselor," "certified addiction counselor I", "certified addiction counselor II", "advanced practice addiction counselor", "C.A.C.I.", "C.A.C.II.", "A.P.A.C.", or any similar title or description of services with the intent to represent that the person practices as an addiction counselor.

(cc) Unless authorized to practice as nursing assistive personnel under this chapter, a person shall not use or imply the use of the words or terms "nursing assistant," "home health aide," "trained medication employee," "dialysis technician," "health aide," or any similar title or description of services with the intent to represent that the person practices as a member of nursing assistive personnel.

(dd) Unless authorized to practice polysomnography under this chapter, a person shall not use or imply the use of the words or terms "polysomnographic technologist", "registered polysomnographic technologist", "licensed polysomnographic technologist", "RPSGT", "LPSGT", "polysomnographic technician", "polysomnographic trainee", or any similar title or description of services with the intent to represent that the person practices polysomnography.

(Mar. 25, 1986, D.C. Law 6-99, § 1003, 33 DCR 729; July 22, 1992, D.C. Law 9-126, § 2(i), 39 DCR 3824; Mar. 14, 1995, D.C. Law 10-203, § 2(g), 41 DCR 7707; Mar. 14, 1995, D.C. Law 10-205, § 2(g), 41 DCR 7712; Mar. 23, 1995, D.C. Law 10-247, § 2(y), 42 DCR 457; Apr. 18, 1996, D.C. Law 11-110, § 7(g), 43 DCR 530; March 10, 2004, D.C. Law 15-88, § 2(j), 50 DCR 10999; July 8, 2004, D.C. Law 15-172, § 2(i), 51 DCR 4938; Mar. 16, 2005, D.C. Law 15-237,

§ 2(i), 51 DCR 10593; Mar. 6, 2007, D.C. Law 16-219, § 2(h), 53 DCR 10211; Mar. 6, 2007, D.C. Law 16-220, § 2(e), 53 DCR 10216; Mar. 6, 2007, D.C. Law 16-228, § 2(j), 53 DCR 10244; Mar. 25, 2009, D.C. Law 17-353, § 151, 56 DCR 1117; July 7, 2009, D.C. Law 18-19, § 2(d), 56 DCR 3629; July 18, 2009, D.C. Law 18-26, § 2(h), 56; May 1, 2013, D.C. Law 19-303, § 2(e), 60 DCR 2711.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-303 added (1-1).

Legislative history of Law 19-303. — See

note to § 3-1202.08.

§ 3-1210.06. Restrictions relating to pharmacies.

(a) Nothing in this chapter regulating the practice of pharmacy shall be construed as altering or affecting in any way District or federal laws requiring a written prescription for controlled substances or other dangerous drugs.

(b)(1) No pharmacist shall supervise more than 1 pharmacy intern at a time without prior approval of the Board of Pharmacy.

(2) No one other than a licensed pharmacist shall receive an oral prescription for Schedule II controlled substances.

(3) It shall be unlawful for a pharmacy intern to compound or dispense any drug by prescription in the District except while in the presence of and under the immediate supervision of a pharmacist.

(4) Any person engaging in the practice of pharmacy as a pharmacy intern shall register with the Mayor and shall comply with the applicable provisions of this chapter and subpart C of subchapter IV of Chapter 28 of Title 47.

(c) Consistent with maintaining patient safety, no pharmacist shall supervise more pharmacy technicians and trainees than he or she can safely supervise. The pharmacist shall be fully responsible for the practice of each technician and trainee during the period of supervision and may be subject to disciplinary action for any violation of this chapter by a technician or trainee he or she supervises.

(Mar. 25, 1986, D.C. Law 6-99, § 1006, 33 DCR 729; May 1, 2013, D.C. Law 19-303, § 2(f), 60 DCR 2711.)

Effect of amendments. — The 2013

amendment by D.C. Law 19-303 added (c).

Legislative history of Law 19-303. — See

note to § 3-1202.08.

CHAPTER 13A. MOTOR VEHICLE THEFT PREVENTION COMMISSION.

Sec.

3-1354. Powers of Commission.

3-1357. Payments into Fund. [Repealed].

Sec.

3-1358. Use of budget authority.

§ 3-1354. Powers of Commission.

The Commission may:

(1) Make grants and provide financial support to:

(A) Law enforcement and correctional agencies, prosecutors, the judiciary, and community organizations for programs designed primarily to reduce motor vehicle theft and to improve the administration of motor vehicle theft laws; and

(B) Law enforcement and prosecutorial agencies to purchase new technology and provide training related primarily to motor vehicle theft;

(2) Conduct programs designed to inform owners of motor vehicles about the financial and social costs of motor vehicle theft and suggest to those owners methods for preventing motor vehicle theft;

(3) Conduct or commission studies to assess the scope of motor vehicle theft and to analyze criminal justice policies, programs, plans, and methods to combat motor vehicle theft;

(4) Develop and sponsor the implementation of plans and strategies to combat motor vehicle theft and to improve the administration of the motor vehicle theft laws, and provide an effective forum for identification of critical problems associated with motor vehicle theft;

(5) Coordinate the development, adoption, and implementation of plans and strategies relating to interagency or intergovernmental cooperation with respect to motor vehicle theft law enforcement in the District of Columbia;

(6) Promulgate bylaws to govern the operations of the Commission;

(7) Enter into contracts for goods and services;

(8) Hire employees, consultants, and contractors to administer the Commission and effectuate the purposes of the Commission;

(9) Establish priority for, allocate, disburse, contract for, and spend its authorized budget to effectuate the purposes of the Commission;

(10) Apply for, solicit, or receive funds that are made available to the Commission from any source to effectuate the purposes of the Commission;

(11) Accept non-monetary contributions, including the services of individuals, mailings, printing, office equipment, facilities, and supplies that are necessary or useful to carry out the functions of the Commission; and

(12) Exercise such other power as is usually possessed by private business organizations organized under the laws of the District, to the extent that the exercise of such powers is to effectuate the purposes of the Commission and is not inconsistent with federal or District law.

(July 18, 2008, D.C. Law 17-197, § 5, 55 DCR 6277; June 19, 2013, D.C. Law 19-320, § 503(a), 60 DCR 3390.)

Section references. — This section is referenced in § 3-1358.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 deleted “subject to the financial limit in § 3-1358(a)(2)” from the end of (8); substituted “its authorized budget to effectuate the purposes of the Commission” for “funds in the Fund to effectuate the purposes of the Commission, except as restricted by § 3-1358” in (9); deleted “for deposit into the Fund” following “receive funds” in (10);

and deleted “provided, that non-monetary contributions shall not be included in the costs of administration limitation prescribed by § 3-1358(a)(2)” following “Commission” in (11).

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act

No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 3-1357. Payments into Fund. [Repealed].

[Repealed].

(July 18, 2008, D.C. Law 17-197, § 8, 55 DCR 6277; Aug. 16, 2008, D.C. Law 17-219, § 3018, 55 DCR 7598; June 19, 2013, D.C. Law 19-320, § 503(b), 60 DCR 3390.)

Legislative history of Law 19-320. — See note to § 3-1354.

§ 3-1358. Use of budget authority.

(a) The Commission may use its budget authority:

(1) To effectuate the purposes of the Commission pursuant to the powers set forth in § 3-1354; and

(2) To pay the Commission's costs to administer the Commission.

(b) Grants and financial support pursuant to § 3-1354(1) shall be used to complement, not supplement, existing resources, and to expand or encourage new initiatives to reduce the incidence of motor vehicle theft in the District of Columbia.

(July 18, 2008, D.C. Law 17-197, § 9, 55 DCR 6277; June 19, 2013, D.C. Law 19-320, § 503(c), 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 rewrote the section heading, which read "Expenditures from Fund"; substituted "use its budget authority" for "expend money in the Fund" in the introductory language of (a); and deleted "and the Fund; provided, that money expended for

this purpose shall not in any fiscal year exceed 15% of the amount of funds deposited in the Fund during the same fiscal year" from the end of (a)(2).

Legislative history of Law 19-320. — See note to § 3-1354.

TITLE 4. PUBLIC CARE SYSTEMS.

Chapter

1. Public Welfare Supervision.
- 2A. Grandparent Caregivers Pilot Program.
13. Child Abuse and Neglect.
17. Access to Justice Initiative Program.

CHAPTER 1. PUBLIC WELFARE SUPERVISION.

Sec.

4-101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished. [Omitted].

Sec.

4-102. Board of Public Welfare — Created; successor to abolished Boards; employees transferred. [Omitted].

4-103. Board of Public Welfare — Composition;

Sec.

appointment; term of office; vacancies; residency requirement; removal; compensation. [Omitted].

meetings; authority to make rules, regulations, and orders. [Omitted].

4-104. Board of Public Welfare — Officers;

§ 4-101. Board of Charities, Board of Children's Guardians, and National Training School for Girls abolished. [Omitted].

Omitted.

Cross references. — Grants to states for aid to families with children and for child-welfare services, Social Security Act, see 42 U.S.C. § 601 et seq.

Section references. — This section is referenced in § 4-220.01.

Omission of text. — The provisions of former § 4-101 have been omitted as obsolete, the Boards referred to herein having been abolished.

The former Board of Charities, Board of Children's Guardians, and the Board of Trustees of the National Training School for Girls were abolished upon the appointment and organization of the Board of Public Welfare pursuant to the Act of March 16, 1926, 44 Stat. 208, ch. 58, § 1. The Board of Public Welfare was subsequently abolished. See notes to § 4-102.

§ 4-102. Board of Public Welfare — Created; successor to abolished Boards; employees transferred. [Omitted].

Omitted.

Section references. — This section is referenced in § 4-124.

Omission of text. — The provisions of former § 4-102 have been omitted as obsolete, the Board referred to herein having been abolished.

Board of Public Welfare abolished. — The Board of Public Welfare was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by Reorganization Plan No. 5 of 1952. Reorganization Order No. 58, as amended, redesignated as Organization Order No. 140 and amended, established, under the direction and control of a Commissioner, a Department of Public Welfare, headed by a Director with the purpose of planning, implementing, and directing public welfare programs. Reorganization Order No. 58

provided that the previously existing Board of Public Welfare would be abolished. That Order also transferred specified functions of the former Board to the Department of Public Health and the Department of Public Welfare. Functions of the Department of Public Welfare and of the Department of Public Health, as set forth in Organization Order Nos. 140 and 141, respectively, were transferred to the Department of Human Resources by Commissioner's Order No. 69-96, dated March 7, 1969, as amended by Commissioner's Order No. 70-83, dated March 6, 1970. The Department of Human Resources was replaced by the Department of Human Services by Reorganization Plan No. 2 of 1979, dated February 21, 1980.

§ 4-103. Board of Public Welfare — Composition; appointment; term of office; vacancies; residency requirement; removal; compensation. [Omitted].

Omitted.

Omission of text. — The provisions of former § 4-103 have been omitted as obsolete, the

Board referred to herein having been abolished. See notes following § 4-102.

§ 4-104. Board of Public Welfare — Officers; meetings; authority to make rules, regulations, and orders. [Omitted].

Omitted.

Omission of text. — The provisions of former § 4-104 have been omitted as obsolete, the Board referred to herein having been abolished. See notes following § 4-102.

CHAPTER 2A. GRANDPARENT CAREGIVERS PILOT PROGRAM.

Sec.
4-251.03. Eligibility.

§ 4-251.03. Eligibility.

(a) A grandparent may be eligible to receive subsidy payments under this section if:

(1) The grandparent has been the child's primary caregiver for at least the previous 6 months.

(2) The child has resided in the grandparent's home for at least the previous 6 months;

(3) The child's parent has not resided in the grandparent's home for at least the previous 6 months; provided, that a parent may reside in the home without disqualifying the grandparent from receiving a subsidy if:

(A) The parent has designated the grandparent to be the child's standby guardian pursuant to Chapter 48 of Title 16;

(B) The parent is a minor enrolled in school; or

(C) The parent is a minor with a medically verifiable disability under criteria that shall be prescribed by the Mayor pursuant to § 4-251.06.

(4) The grandparent, and all adults residing in the grandparent's home, has submitted to a criminal background check;

(5) The grandparent's household income is under 200 percent of the federally-defined poverty level;

(6) The grandparent is a resident of the District as defined by § 4-205.03;

(7) The grandparent has applied for Temporary Assistance for Needy Families benefits for the child;

(8) The grandparent has entered into a subsidy agreement that includes a provision that no payments received under the agreement shall inure to the benefit of the child's parent but shall be solely for the benefit of the child;

(8A) The grandparent is not currently receiving a guardianship or adoption subsidy for the child;

(9) The grandparent has provided a signed statement, sworn under penalty of perjury, that the information provided to establish eligibility pursuant to this section, or any rules promulgated pursuant to § 4-251.06, is true and accurate to the best belief of the grandparent applicant; and

(10) The grandparent has met any additional requirements prescribed by the Mayor pursuant to rules issued under § 4-251.06.

(a-1) The Mayor may waive the eligibility requirements established in subsection (a)(1) and (2) of this section if:

(1) The Agency determines that the child is at risk of removal from the parent, guardian, or custodian pursuant to § 4-1301.07;

(2) The parent, guardian, or custodian permits the grandparent to be the child's primary caregiver; and

(3) The parent, guardian, or custodian permits the child to reside with the grandparent.

(b)(1) The Mayor shall recertify the eligibility of each grandparent receiving a subsidy on at least an annual basis.

(2) For the purposes of the recertification, a grandparent may be required to provide a signed statement, sworn under penalty of perjury, that the information provided to establish continued eligibility pursuant to this section, or any rules promulgated pursuant to § 4-251.06, remains true and accurate to the best belief of the grandparent.

(c)(1) The Mayor shall terminate subsidy payments to a grandparent at any time if:

(A) The Mayor determines the grandparent no longer meets the eligibility requirements established by this section, or by rules issued under § 4-251.06; or

(B) There is a substantiated finding of child abuse or neglect against the grandparent caregiver resulting in the removal of the child from the grandparent's home.

(2) A grandparent whose subsidy payments are terminated as a result of the removal of the child from the grandparent's home may reapply if the child has been returned to the grandparent's home.

(d) Eligibility for subsidy payments under this section may continue until the child reaches 18 years of age.

(e) An applicant whose application for a subsidy has been denied or whose subsidy has been terminated shall be entitled to a hearing under the applicable provisions of Chapter 5 of Title 2; provided that a grandparent shall not be entitled to a hearing if the denial or termination of a subsidy is based upon the unavailability of appropriated funds.

(f) Any statement under this section made with knowledge that the information set forth therein is false shall be subject to prosecution as a false statement under § 22-2405(a).

(Mar. 8, 2006, D.C. Law 16-69, § 103, 53 DCR 54; Sept. 20, 2007, D.C. Law 17-21, § 3(a), 54 DCR 6835; Apr. 20, 2013, D.C. Law 19-261, § 2, 60 DCR 1296.)

Section references. — This section is referenced in § 4-251.05.

Effect of amendments.

The 2013 amendment by D.C. Law 19-261 added (a-1).

Legislative history of Law 19-261. — Law 19-261, the "Grandparent Caregivers Program Amendment Act of 2012," was introduced in

Council and assigned Bill No. 19-1000. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 14, 2013, it was assigned Act No. 19-613 and transmitted to Congress for its review. D.C. Law 19-261 became effective on Apr. 20, 2013.

PART B.

CLIENT RIGHTS AND RESPONSIBILITIES.

§ 4-754.11. Client rights.

Section references. — This section is referenced in § 4-754.12, § 4-754.31, § 4-754.32, § 4-754.33, § 4-754.38, § 4-754.41, § 4-754.52, and § 4-755.01.

CASE NOTES

Denial of shelter.

While the complaint alleged that unspecified former shelter residents and other homeless in the area were denied shelter during conditions covered by D.C. Code § 4-751.01(35), the complaint pointedly did not allege that any of the current or proposed plaintiffs were among those denied shelter during that night, nor did

any of the declarations submitted by the plaintiffs make such a claim, so they could not prevail on any claim under the District of Columbia's Homeless Services Reform Act (HSRA), D.C. Code § 4-751.01 et seq., based on the denial of shelter. *Boykin v. Gray*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 143580 (D.D.C. Oct. 4, 2012).

CHAPTER 13. CHILD ABUSE AND NEGLECT.

Subchapter I. Prevention of Child Abuse and Neglect

Part A

Reporting Abuse and Neglect

Sec.

4-1301.09a. Reasonable efforts.

Part C-iii

Statements of Rights and Responsibilities for Youth in Foster Care

4-1303.71. Definitions.

4-1303.72. Statements of Rights and Responsibilities.

Sec.

4-1303.73. Dissemination of rights and responsibilities information.

4-1303.74. Implementation plan.

Subchapter II. Reports of Neglected Children

4-1321.02. Persons required to make reports; procedure.

4-1321.07. Failure to make report.

Subchapter I. Prevention of Child Abuse and Neglect.

PART A.

REPORTING ABUSE AND NEGLECT.

§ 4-1301.09a. Reasonable efforts.

(a) In determining and making reasonable efforts under this section, the child's safety and health shall be the paramount concern.

(b)(1) Except as provided in subsection (c) of this section, reasonable efforts shall be made to preserve and reunify the family by the Agency.

(2) These reasonable efforts shall be made prior to the removal of a child from the home in order to prevent or eliminate the need for removing the child, unless the provision of services would put the child in danger.

(3) Reasonable efforts shall be made to make it possible for the child to return safely to the child's home.

(c) If reasonable efforts as required by subsection (b) of this section are determined to be inconsistent with the child's permanency plan, the Agency shall make reasonable efforts to place the child in accordance with the child's permanency plan and to complete whatever steps are necessary to finalize the child's permanent placement.

(d) The Agency shall not be required to make reasonable efforts to preserve and reunite the family with respect to a parent if:

(1) A court of competent jurisdiction has determined that the parent:

(A) Subjected the child who is the subject of a petition before the Family Court of the Superior Court of the District of Columbia ("Family Court"), a sibling of the child, or another child to cruelty, abandonment, torture, chronic abuse, or sexual abuse;

(B) Committed the murder or voluntary manslaughter of a sibling of the child who is the subject of a petition before the Family Court or another child, or of any other member of the household of the parent;

(C) Aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of the child who is the subject of a petition before the Family Court, a sibling of the child, or another child, or of any other member of the household of the parent; or

(D) Committed an assault that constitutes a felony against the child who is the subject of a petition before the Family Court, a sibling of the child, or another child;

(2) The parent's parental rights have been terminated involuntarily with respect to a sibling; or

(3) A court of competent jurisdiction has determined that the parent is required to register with a sex offender registry under section 113(a) of the Adam Walsh Child Protection and Safety Act of 2006, approved July 27, 2006 (120 Stat. 593; 42 U.S.C. § 16913(a)).

(e) If reasonable efforts are not made pursuant to subsection (d) of this section:

(1) A permanency hearing conducted pursuant to § 16-2323 shall be held for the child within 30 days after the determination that reasonable efforts are not required; and

(2) Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(f) Reasonable efforts to place a child for adoption, with an approved kinship caregiver, with a legal custodian or guardian, or in another permanent placement may be made concurrently with the reasonable efforts required by subsection (b) of this section.

(Sept. 23, 1977, D.C. Law 2-22, title I, § 109a, as added June 27, 2000, D.C. Law 13-136, § 201(c), 47 DCR 2850; Apr. 4, 2001, D.C. Law 13-277, § 2(h), 48

DCR 2043; Apr. 12, 2005, D.C. Law 15-341, § 2(e), 52 DCR 2315; July 13, 2012, D.C. Law 19-164, § 2, 59 DCR 6185.)

Section references. — This section is referenced in § 16-2323 and § 16-2354.

Effect of amendments.

D.C. Law 19-164, in the lead-in language of subsec. (d), substituted “efforts to preserve and reunite the family” for “efforts”; in subsec. (d)(1)(A), substituted “the child who is the subject of a petition before the Family Court of the Superior Court of the District of Columbia (‘Family Court’), a sibling of the child, or another child” for “a sibling or another child”; in subsec. (d)(1)(B), substituted “a sibling of the

child who is the subject of a petition before the Family Court” for “a sibling”; in subsec. (d)(1)(C), substituted “the child who is the subject of a petition before the Family Court, a sibling of the child, or another child” for “a sibling or another child”; in subsec. (d)(1)(D), substituted “Family Court, a sibling of the child, or another child,” for “Family Division of the Superior Court, a sibling of such a child, or another child; or”; in subsec. (d)(2), substituted “sibling; or” for “sibling.”; and added subsec. (d)(3).

PART C-iii.

STATEMENTS OF RIGHTS AND RESPONSIBILITIES FOR YOUTH IN
FOSTER CARE.

§ 4-1303.71. Definitions.

For the purposes of this part, the term “Youth” means an individual under 21 years of age who is in the care of the Agency.

(Sept. 23, 1977, D.C. Law 2-22, title III-C, § 371, as added Apr. 23, 2013, D.C. Law 19-276, § 2, 60 DCR 2060.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-276 added this section.

Legislative history of Law 19-276. — Law 19-276, the “Foster Youth Statements of Rights and Responsibilities Amendment Act of 2012,” was introduced in Council and assigned

Bill No. 19-803. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-640 and transmitted to Congress for its review. D.C. Law 19-276 became effective on April 23, 2013.

§ 4-1303.72. Statements of Rights and Responsibilities.

(a) Within 90 days of April 23, 2013, the Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall amend existing rules governing youth in foster care, namely, 29 DCMR §§ 6004, 6203, and 6303, (Statement of Rights and Responsibilities for youth in foster homes, group homes, and independent living programs), to:

(1) Incorporate existing rights for youth in foster care provided by local law, federal law, local regulations, agency administrative issuances, and other policy documents; and

(2) State that a youth in foster care has the right to receive and have the youth’s caregivers and guardians ad litem receive, if the youth is under 18 years of age, at least 30 days before leaving care, copies of the youth’s:

- (A) Birth certificate;
- (B) Original social security card;
- (C) State and District identification cards;

- (D) Immunization records;
- (E) Medical insurance information;
- (F) Education portfolios and health records;
- (G) Immigration documents; and
- (H) Other personal information as the Mayor deems appropriate.

(b) Statements of Rights and Responsibilities required by subsection (a) of this section ("Statements of Rights and Responsibilities") shall guarantee that each youth will receive the following:

- (1) A printed copy of the Statements of Rights and Responsibilities in readily understandable language;
- (2) An explanation of each youth's right to be informed of all decisions made on the youth's behalf by the Agency;
- (3) An explanation of each youth's right to report violations of the youth's rights to the Agency;
- (4) The process for reporting rights violations to the Agency; and (5) An explanation of the process for contacting the Agency to make concerns about care, placement, and services.

(c) Proposed rules to implement this part shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed disapproved.

(Sept. 23, 1977, D.C. Law 2-22, title III-C, § 372, as added Apr. 23, 2013, D.C. Law 19-276, § 2, 60 DCR 2060.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-274 added this section. **Legislative history of Law 19-274.** — See note to § 4-1303.71.

§ 4-1303.73. Dissemination of rights and responsibilities information.

(a) When a youth comes under the care of the Agency, the Agency shall inform the youth of the youth's rights and disseminate to the youth and the appropriate care providers the Statements of Rights and Responsibilities.

(b) The Agency shall disseminate the Statements of Rights and Responsibilities and related information to youth and individuals who entered care before April 23, 2013.

(c) The Agency shall incorporate the Statements of Rights and Responsibilities into scheduled trainings for social workers and other affected partners, including providers, foster parents, and other persons who are associated with the care of youth.

(Sept. 23, 1977, D.C. Law 2-22, title III-C, § 373, as added Apr. 23, 2013, D.C. Law 19-276, § 2, 60 DCR 2060.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-274 added this section.

§ 4-1303.74. Implementation plan.

(a) Within 90 days of April 23, 2013, the Agency shall develop an implementation plan for the dissemination of the Statements of Rights and Responsibilities and a mechanism for receiving and handling complaints or concerns made by youth or on behalf of youth and provide a mechanism to resolve issues related to the youth's care, placement, and services through the Agency.

(b) The Agency shall have the following responsibilities regarding the implementation of this part:

(1) Investigate and attempt to promptly resolve concerns made by youth or on behalf of youth;

(2) Document the number, general sources and origins, and nature of the communication;

(3) Beginning January 31, 2014, and every January 31st thereafter, through the Director, make available to the Council a report containing data collected over the course of the prior year that includes the following information:

(A) The number of contacts made to the Agency by telephone, website address, or otherwise;

(B) The number of concerns made, including the type and general sources of those concerns;

(C) The number of investigations performed;

(D) The number of pending concerns; and

(E) The trends and issues that arose in the course of investigating concerns and outcomes of the investigations conducted; and

(4) Post the report required by paragraph (3) of this subsection on the Agency's website so that it is readily available to the public.

(Sept. 23, 1977, D.C. Law 2-22, title III-C, § 374, as added Apr. 23, 2013, D.C. Law 19-276, § 2, 60 DCR 2060.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-274 added this section.

*Subchapter II. Reports of Neglected Children.***§ 4-1321.02. Persons required to make reports; procedure.**

(a) Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been or is in immediate danger of being a mentally or physically abused or neglected child, as defined in § 16-2301(9), shall immediately report or have a report made of such knowledge or suspicion to either the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(a-1) [Not funded].

(a-2) [Not funded].

(b) Persons required to report such abuse or neglect shall include Child and Family Services Agency employees, agents, and contractors, and every physician, psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person involved in the care and treatment of patients, law-enforcement officer, humane officer of any agency charged with the enforcement of animal cruelty laws, school official, teacher, athletic coach, Department of Parks and Recreation employee, public housing resident manager, social service worker, day care worker, human trafficking counselor as defined in § 14-311(2), domestic violence counselor as defined in § 14-310(a)(2), and mental health professional as defined in § 7-1201.01(11). Such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation. Whenever a person is required to report in his or her capacity as a member of the staff of a hospital, school, social agency or similar institution, he or she shall immediately notify the person in charge of the institution or his or her designated agent who shall then be required to make the report. The fact that such a notification has been made does not relieve the person who was originally required to report from his or her duty under subsection (a) of this section of having a report made promptly to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(c) In addition to those persons who are required to make a report, any other person may make a report to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency.

(d) In addition to the requirements in subsections (a) and (b) of this section, any health professional licensed pursuant to Chapter 12 of Title 3, or a law enforcement officer, [or] humane officer of any agency charged with the enforcement of animal cruelty laws, except an undercover officer whose identity or investigation might be jeopardized, shall report immediately, in writing, to the Child and Family Services Agency, that the law enforcement officer or health professional has reasonable cause to believe that a child is abused as a result of inadequate care, control, or subsistence in the home environment due to exposure to drug-related activity. The report shall be in accordance with the provisions of § 4-1321.03.

(e) Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, or is in immediate danger of being, the victim of "sexual abuse" or "attempted sexual abuse" prohibited by Chapter 30 of Title 22 [§ 22-3001 et seq.]; or that the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute, as that term is defined in § 22-2701.01(3); or that the child has an injury caused by a bullet; or that the child has an injury caused by a knife or other sharp object which has been caused by other than accidental means, shall immediately report or have a report made of such knowledge, information, or suspicion to the Metropolitan Police Department or the Child and Family Services Agency.

(f) A health professional licensed pursuant to Chapter 12 of Title 3 [§ 3-1201.01 et seq.], who in his or her own professional or official capacity knows

that a child under 12 months of age is diagnosed as having a Fetal Alcohol Spectrum Disorder, shall immediately report or have a report made to the Child and Family Services Agency.

(g) A person who violates this section shall not be prosecuted under subchapter II-A of Chapter 30 of Title 22 [§ 22-3020.51 et seq.].

(Nov. 6, 1966, 80 Stat. 1354, Pub. L. 89-775, § 2; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(c), 24 DCR 3341; Mar. 15, 1990, D.C. Law 8-87, § 2(a), 37 DCR 50; Mar. 2, 2007, D.C. Law 16-204, § 2, 53 DCR 9059; Apr. 24, 2007, D.C. Law 16-306, § 203(a), 53 DCR 8610; July 18, 2008, D.C. Law 17-198, § 3, 55 DCR 6283; Dec. 5, 2008, D.C. Law 17-281, § 102, 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-353, §§ 173(a), 193, 240(b), 56 DCR 1117; Oct. 23, 2010, D.C. Law 18-239, § 202, 57 DCR 5405; Oct. 26, 2010, D.C. Law 18-242, § 2, 57 DCR 7555; July 13, 2012, D.C. Law 19-164, § 3, 59 DCR 6185; June 8, 2013, D.C. Law 19-315, § 2(a), 60 DCR 1702.)

Section references. — This section is referenced in § 3-1205.14, § 4-1301.06b, § 4-1451.06, § 16-1056, § 22-3020.52, and § 38-203.

Effect of amendments.

The 2013 amendment by D.C. Law 19-315 added (g).

Legislative history of Law 19-315. — Law 19-315, the “Child Sexual Abuse Reporting

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-647. The Bill was adopted on first and second readings on Nov. 15, 2012 and Dec. 4, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-627 and transmitted to Congress for its review. D.C. Law 19-315 became effective on June 8, 2013.

§ 4-1321.07. Failure to make report.

Any person required to make a report under this subchapter who willfully fails to make such a report shall be fined not more than the amount set forth in § 22-3571.01, imprisoned not more than 180 days, or both. Violations of this subchapter shall be prosecuted by the Attorney General of the District of Columbia or his or her agent in the name of the District of Columbia.

(Nov. 6, 1966, Pub. L. 89-775, § 7; Sept. 23, 1977, D.C. Law 2-22, title I, § 103(g), 24 DCR 3341; Apr. 24, 2007, D.C. Law 16-306, § 203(c), 53 DCR 8610; June 8, 2013, D.C. Law 19-315, § 2(b), 60 DCR 1702.)

Section references. — This section is referenced in § 16-801.

Effect of amendments.

The 2013 amendment by D.C. Law 19-315 rewrote this section, which formerly read: “Any person required to make a report under this subchapter who willfully fails to make such a report shall be fined not more than \$300 or

imprisoned for not more than 90 days or both. Violations of this subchapter shall be prosecuted by the Corporation Counsel of the District of Columbia or his or her agent in the name of the District of Columbia.”

Legislative history of Law 19-315. — See note to § 4-1321.02.

CHAPTER 17. ACCESS TO JUSTICE INITIATIVE PROGRAM.

Subchapter I. Definitions

Sec.

4-1701.01. Definitions.

Subchapter II. Access to Justice Initiative

Part C

Poverty Lawyer Loan Repayment Assistance
Program

4-1704.03. LRAP; participation eligibility.

Subchapter I. Definitions.

§ 4-1701.01. Definitions.

For the purposes of this chapter, the term:

(1) "Adequate notice" means written notice of termination from eligible employment provided within 15 days of termination and separate written confirmation by the provider of eligible employment.

(2) "Adjusted gross income" shall have the same meaning as provided in § 47-1803.02(b).

(3) "Administrator" means the entity designated to administer the LRAP, established pursuant to § 4-1704.01.

(4) "Applicant" means an individual who applies for assistance from the LRAP.

(5) "ATJ" means the Access to Justice Grant Funding for Civil Legal Services.

(6) "Bar Foundation" means the District of Columbia Bar Foundation.

(7) "Deputy Mayor" means the Deputy Mayor for Public Safety and Justice or the Office of the Deputy Mayor for Public Safety and Justice, as the context requires.

(8) "Eligible debt" means outstanding principal, interest, and related expenses from loans obtained for reasonable educational expenses associated with obtaining a law degree made by government and commercial lending institutions or educational institutions, but does not include loans extended by a private individual or group of individuals, including families.

(9) "Eligible employment" means those areas of legal practice certified by the Administrator to serve the public interest, including employment with legal organizations that qualify for District of Columbia Bar Foundation funding, but does not include employment with the District of Columbia government or federal government or with or as the Administrator; and

(A) Working not less than 35 hours per week where such hours are fully devoted to eligible employment, hereinafter "full-time employment"; or

(B) Working not less than 17 hours per week where such hours are fully devoted to eligible employment, hereinafter "part-time employment."

(10) "Full-time employment" means not less than 35 hours of work per week.

(11) "Initiative" means the Access to Justice Initiative established pursuant to § 4-1702.01.

(12) "Involuntary termination" means termination for budgetary or inadequate funding reasons, as confirmed, in writing, by the eligible employer.

(13) "Lawyer" means a graduate of an accredited law school who is:

(A) Licensed to practice in the District of Columbia;

(B) Authorized under the provisions of Rule 49(c)(9) of the District of Columbia Court of Appeals to practice law before that court; or

(C) A member in good standing of the highest court of any state who has submitted an application for admission to the District of Columbia Bar.

(14) "LRAP" means the District of Columbia Poverty Lawyer Loan Repayment Assistance Program.

(15) "Participant" means an eligible lawyer whose application to the LRAP has been approved.

(16) "Reasonable educational expenses" means the cost of tuition for law school as well as the costs of education considered to be required by the school's degree program, such as fees for housing, transportation and commuting costs, books, supplies, and educational equipment and materials that are part of the estimated student budget of the school in which the participant was enrolled.

(17) "Service obligation" means the period of eligible employment necessary to sustain participation in the LRAP, which shall not be less than 45 weeks within the 12-month period for which the participant applied for assistance.

(Sept. 24, 2010, D.C. Law 18-223, § 101, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226; June 19, 2013, D.C. Law 19-320, § 504(a), 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added the semicolon and "and" to the end of (9); and added (9)(A) and (9)(B).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council

and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Subchapter II. Access to Justice Initiative.

PART C.

POVERTY LAWYER LOAN REPAYMENT ASSISTANCE PROGRAM.

§ 4-1704.03. LRAP; participation eligibility.

(a) To be eligible to participate in the LRAP, an applicant shall, at the time of application and throughout participation in the LRAP:

(1) Hold, or actively plan to secure, eligible employment; provided, that a participant shall hold eligible employment before any payments may be disbursed;

§ 4-1704.03 POLICE, FIREFIGHTERS, AND MEDICAL EXAMINER

- (2) Be a resident of the District of Columbia;
 - (3) Be a lawyer;
 - (4) Have an annual adjusted gross income of less than \$75,000, subject to a 3% annual increase beginning on October 1, 2013;
 - (5) Exhaust all other available avenues for loan repayment assistance, including through participation in any available undergraduate or law school debt-forgiveness programs;
 - (6) Have no current service obligation from scholarships;
 - (7) Submit a timely and completed application;
 - (8) Be in satisfactory repayment status on all eligible debt; and
 - (9) Execute a release to allow the Administrator access to records, credit information, and information from lenders necessary to verify eligibility of debt and to determine loan repayments.
- (b) A law student attending the David A. Clarke School of Law at the University of the District of Columbia who is in his or her final year of school may apply and be approved for loan repayment assistance if the applicant demonstrates that he or she will meet all eligibility requirements by the time of the first award disbursement.

(Sept. 24, 2010, D.C. Law 18-223, § 403, as added Sept. 14, 2011, D.C. Law 19-21, § 3002(b), 58 DCR 6226; June 19, 2013, D.C. Law 19-320, § 504(b), 60 DCR 3390.)

Section references. — This section is referenced in § 4-1704.05 and § 4-1704.06.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 substituted “\$75,000, subject to a 3% annual increase be-

ginning on October 1, 2013” for “\$65,000” in (a)(4).

Legislative history of Law 19-320. — See note to § 4-1701.01.

TITLE 5. POLICE, FIREFIGHTERS, MEDICAL EXAMINER, AND FORENSIC SCIENCES.

Chapter

1. Metropolitan Police.
3. Federal Law Enforcement Officer Cooperation With Metropolitan Police Department.
4. Fire and Emergency Services Department.
- 6A. Police and Firefighters Limited Duty.
7. Police and Firefighters Retirement and Disability.
14. Chief Medical Examiner.
15. Department of Forensic Sciences.

CHAPTER 1. METROPOLITAN POLICE.

*Subchapter IV. Metropolitan Police
Department Application, Appointment, and
Training Requirements**Subchapter X. Property*

Sec.
5-107.04. Duties of the Board.

Sec.
5-119.10. Sale at public auction; motor vehicle
with lien of record; disposition of
proceeds from sale.

*Subchapter IV. Metropolitan Police Department Application,
Appointment, and Training Requirements.***§ 5-107.04. Duties of the Board.**

(a) The Board shall establish minimum application and appointment criteria for the Metropolitan Police Department that include the following:

- (1) That an applicant be a citizen of the United States at the time of application;
- (2) Age limits;
- (3) Height and weight guidelines;
- (4) Physical fitness and health standards;
- (5) Psychological fitness and health standards;
- (6) The completion of a criminal background investigation;
- (7) The consideration to be placed on an applicant's participation in court-ordered community supervision or probation for any criminal offense at any time from application through appointment;
- (8) The consideration to be placed on an applicant's criminal history, including juvenile records;
- (9) The completion of a background investigation;
- (10) Military discharge classification information; and
- (11) Information on prior service with the Metropolitan Police Department.

(b) Notwithstanding the minimum standards established by the Board in accordance with subsection (a) of this section, the Chief of Police may deny employment to any applicant based upon conduct occurring while the applicant was a minor if, considering the totality of the circumstances, the Chief of Police determines that the applicant has not displayed the good moral character or integrity necessary to perform the duties of a sworn member of the Metropolitan Police Department.

(c) Each applicant selected for appointment as a sworn member of the Metropolitan Police Department shall successfully complete an initial training program and initial firearms training program before deployment, including minimum requirements developed by the Board, unless the applicant receives a waiver pursuant to subsection (e) of this section.

(d) The Board shall determine minimum requirements for the initial training program and initial firearms training program for Metropolitan Police Department recruits, including the appropriate sequence, content, and duration of each program, and:

- (1) The minimum number of hours required;

(2) If and under what circumstances the initial training program will include temporary deployment of the applicant before regular deployment as a sworn member; and

(3) The subjects to be included as part of every applicant's initial training.

(e) The Chief of Police may modify or waive the initial training program and initial firearms training program requirements for either of the following:

(1) Any applicant who is a former sworn member of the Metropolitan Police Department who has been separated from employment with the Metropolitan Police Department for less than 3 years; or

(2) Any former member of a federal, state, or local law enforcement agency who has completed training similar to the Metropolitan Police Department's initial training program and initial firearms training program and who has been separated from employment with a federal, state, or local law enforcement agency for less than 3 years.

(f) The Board shall determine minimum requirements for a continuing education program for sworn members of the Metropolitan Police Department, including:

(1) Requirements for a continuing education firearms training program; and

(2) The appropriate consequence, including ineligibility for promotion, if a member fails to satisfy the continuing education requirement.

(g) The Metropolitan Police Department may utilize the services of other law enforcement agencies or organizations engaged in the education and training of law enforcement personnel to satisfy any portion of the initial training program, the initial firearms training program, or the continuing education program pursuant to this section.

(h) The Board shall establish the minimum requirements for any instructor of any component of the Metropolitan Police Department's initial training program, continuing education program, or firearms training program.

(i) The Board shall establish minimum selection and training standards for members of the District of Columbia Housing Authority Police Department.

(j) The Board shall also review and make recommendations to the Chief of Police, the Mayor, and the Council, regarding:

(1) The Metropolitan Police Department's tuition assistance program;

(2) The optimal probationary period for new members of the Metropolitan Police Department pursuant to subsection (q) of this section;

(3) The issue of creating separate career tracks for patrol and investigations;

(4) Minimum standards for continued level of physical fitness for sworn members of the Metropolitan Police Department; and

(5) The Metropolitan Police Department Reserve Corps program's training and standards.

(k) The minimum standards set by the Board pursuant to subsections (a), (d), (f), and (h) of this section shall not preclude the Metropolitan Police Department from establishing higher standards, including standards regarding its application, initial training, and continuing education programs at the department.

(l) The minimum standards set by the Board pursuant to subsection (i) of this section shall not preclude the District of Columbia Housing Authority Police Department from establishing higher standards.

(m) Not later than December 31 of each calendar year, the Board, through the Chief of Police, shall deliver a report to the Mayor and the Council concerning the Metropolitan Police Department's initial training program, continuing education program, and firearms training program. The report shall include:

(1) The number of:

(A) Applicants who have successfully completed the application process;

(B) Applicants who have completed the initial training program; "(C) Sworn members who have completed the continuing education and firearms training programs;

(2) An assessment of the Metropolitan Police Department's compliance with the Board's prescribed minimum standards for each of its application and training programs pursuant to this section;

(3) Recommendations where the Board believes that the Metropolitan Police Department's current standards for applicants, initial training including firearms training, and continuing education can be improved; and

(4) An overall assessment of the Metropolitan Police Department's current and planned recruiting efforts in light of public safety needs in the District.

(n) The administrative work of the Board shall be carried out by members of the Metropolitan Police Department as appointed by the Chief of Police.

(o) Any applicant who met the age requirement at the time of application and who was denied appointment on the basis of racial discrimination, as determined by the Director of the Office of Human Rights, may be appointed notwithstanding the applicant's age at the time of that determination.

(p) Applications for appointment to the Metropolitan Police Department shall be made on forms furnished by the Metropolitan Police Department.

(q) Appointments to the Metropolitan Police Department shall be for a probationary period to be determined by the Chief of Police. Continuation of service after the expiration of that period shall be dependent upon the conduct of the appointee and his or her capacity for the performance of the duties to which assigned, as indicated by reports of superior officers. The probationary period shall be an extension of the examination period.

(r) If the Police and Fire Clinic shall find any probationer physically or mentally unfit to continue his or her duties, that probationer shall be required to appear before the Police and Firefighter's Retirement and Relief Board. That Board shall make any findings as are required pursuant to § 5-713, and those findings shall be incorporated in a recommendation submitted to the Mayor.

(s) Each police officer appointed shall maintain a level of physical fitness to be determined by the Chief of Police. The final determination with respect to inappropriate fitness levels shall be made by the Medical Director of the Police and Fire Clinic.

(t)(1) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this section.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within this 45-day review period, the proposed rules shall be deemed approved.

(Oct. 4, 2000, D.C. Law 13-160, § 205, 47 DCR 4619; Sept. 30, 2004, D.C. Law 15-194, § 302(b), 51 DCR 9406; June 19, 2013, D.C. Law 19-320, § 505, 60 DCR 3390.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 deleted “standards for applicants; continuing education program” from the section heading; and rewrote the section.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council

and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Subchapter X. Property.

§ 5-119.10. Sale at public auction; motor vehicle with lien of record; disposition of proceeds from sale.

(a) With respect to all property (including money), except perishable property, animals, firearms and property of persons with mental illness, not otherwise disposed of in accordance with § 5-119.09, that shall remain in the custody of the Property Clerk for not less than 90 days without being claimed and repossessed, the Property Clerk shall:

(1) Publish or cause to be published in a newspaper of general circulation in the District, once a week for 2 consecutive weeks:

(A) Notice of the location where a full description of the property can be reviewed; and

(B) Notice that if such property is not claimed by the rightful owner within 45 days from the date of 1st publication, title to the property shall revert to the finder of lost property after deduction for the expenses of custody and publication, or to the District of Columbia in all other cases; and

(2) Post or cause to be posted in the Metropolitan Police Department headquarters, where public notices are commonly or usually posted, a description of the property, and a copy of the notice published in the newspaper of general circulation in the District, and shall make a record of the date when such publication and the posting of the notices are made; and

(3) Post or cause to be posted on the Metropolitan Police Department website a description of the property, and a copy of the notice published in the newspaper of general circulation in the District, and shall make a record of the date when such publication and the posting of the notices are made.

(b) If neither the rightful owner nor the finder appear to claim the lost property, title to such property shall transfer to the District government and

the property may be retained by the Mayor for official government use or may be sold at public auction at such place and time as the Property Clerk may direct and in such a manner as to expose to the inspection of bidders all property so offered for sale. The Property Clerk needs not offer any property for sale if, in the Property Clerk's opinion, the probable cost of sale exceeds the value of the property.

(c) The purchaser at any sale conducted by the Property Clerk pursuant to this section shall receive title to the property purchased, free from all claims of the rightful owner or the finder of the property and all persons claiming through and under the rightful owner or the finder. The Property Clerk shall execute all documents necessary to complete the transfer of title.

(d) All proceeds from any sale under this section shall be deposited in the General Fund of the District government.

(e) Repealed.

(f)(1) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue proposed rules to implement the provisions of this section.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 5 of Title 2.

(R.S., D.C., § 417; Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12; Mar. 3, 1936, 49 Stat. 1158, ch. 121, § 2; Sept. 25, 1962, 76 Stat. 591, Pub. L. 87-691, § 4; Mar. 5, 1981, D.C. Law 3-160, § 202, 27 DCR 5150; Sept. 29, 1988, D.C. Law 7-164, § 2, 35 DCR 5739; Sept. 9, 1989, D.C. Law 8-24, § 6(c)-(e), 36 DCR 4575; Oct. 28, 2003, D.C. Law 15-35, § 13(a), 50 DCR 6579; Apr. 24, 2007, D.C. Law 16-305, § 16, 53 DCR 6198; Sept. 20, 2012, D.C. Law 19-168, § 3002, 59 DCR 8025.)

Section references. — This section is referenced in § 5-119.06 and § 5-119.09.

Effect of amendments.

The 2012 amendment by D.C. Law 19-168

rewrote (a)(1)(A), which formerly read: "A description of the property; and"; added "a description of the property, and" in (a)(2); added (a)(3); and made a related change.

CHAPTER 3. FEDERAL LAW ENFORCEMENT OFFICER COOPERATION WITH METROPOLITAN POLICE DEPARTMENT.

Sec.
5-301. Powers and duties of federal law en-

forcement officers when making arrests for nonfederal offenses.

§ 5-301. Powers and duties of federal law enforcement officers when making arrests for nonfederal offenses.

(a) When a federal law enforcement agency has entered into a cooperative agreement with the Metropolitan Police Department of the District of Columbia ("MPD") to assist MPD in carrying out crime prevention and law enforcement activities pursuant to § 5-133.17, a sworn federal law enforcement officer of a covered federal law enforcement agency as defined in § 5-133.17(d) ("federal officer"), who in his official capacity is authorized to make arrests, shall, when making an arrest in the District of Columbia for a nonfederal offense, have the same legal status and immunity from suit as an MPD officer if the arrest is made under the following circumstances:

(1) The federal officer has probable cause to believe that the person arrested has committed a felony;

(2) The federal officer has probable cause to believe that the person arrested has committed a misdemeanor; or

(3) The federal officer is rendering assistance to an MPD officer in an emergency at the request of that MPD officer.

(b) A sworn federal law enforcement officer of a covered federal law enforcement agency as defined in § 5-133.17(d), who in his official capacity is authorized to make arrests, may be authorized by the covered federal law enforcement agency to carry weapons within the boundaries of the District of Columbia while in an off-duty status provided that:

(1) The cooperative agreement authorizes the federal officer to carry weapons while in an off-duty status; and

(2) The federal officer has training substantially similar to the weapons training requirements of the MPD.

(May 9, 2000, D.C. Law 13-100, § 2, 46 DCR 794; June 19, 2013, D.C. Law 19-320, § 201, 60 DCR 3390.)

Section references. — This section is referenced in § 5-302.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 substituted "MPD" for "the Department" in the introductory language of (a); and substituted "has probable cause to believe that the person arrested has committed a misdemeanor" for "reasonably believes that the person arrested has committed a misdemeanor in his presence" in (a)(2).

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CHAPTER 4. FIRE AND EMERGENCY SERVICES DEPARTMENT.

Sec.
5-417.02. Compliance with fire code and occupancy requirements — Authority,

generally; authority to enter and examine; sanctions.

§ 5-417.02: Compliance with fire code and occupancy requirements — Authority, generally; authority to enter and examine; sanctions.

(a) The Fire Chief, the Fire Marshal, or his or her authorized representative shall have the authority to enter upon or examine any area, building or premises, vehicle or other thing during normal business hours to inspect for compliance with the District fire code, or enter any building at any time when there is probable cause to believe that the premises may be overcrowded.

(b) The Fire Chief, the Fire Marshal, or his or her authorized representative shall have the authority to sanction a restaurant or other public venue for failure to post a seating or occupancy capacity placard; provided, that no restaurant or public venue shall be liable for the resulting fine or penalty unless the Mayor has provided the seating or occupancy capacity placard to the owner of the premises.

(Mar. 26, 1999, D.C. Law 12-176, § 2a, as added June 19, 2013, D.C. Law 19-320, § 506, 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added this section.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was

adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CHAPTER 6A. POLICE AND FIREFIGHTERS LIMITED DUTY.

Subchapter II. Fire and Emergency Medical Services Employee Presumptive Disability

Sec.

5-651. Definitions. [Not funded].

5-652. Presumption as to disability or death from heart disease, hypertension, or respiratory disease. [Not funded].

Sec.

5-653. Presumption as to disability or death from cancer. [Not funded].

5-654. Presumption as to disability or death from infectious disease. [Not funded].

5-655. Disqualification from presumption as to disability or death. [Not funded].

5-656. Applicability. [Not funded].

Subchapter I. General.

§ 5-631. Definitions.

Editor's notes.

Because of the codification of D.C. Law 15-194, Subtitle D as subchapter II of this chapter,

the preexisting text, §§ 5-631 through 5-635, has been designated as subchapter I.

Subchapter II. Fire and Emergency Medical Services Employee Presumptive Disability.

§ 5-651. Definitions. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 651, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — Law 19-311, the “Fire and Emergency Medical Services Employee Presumptive Disability Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-616. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 13,

2013, it was assigned Act No. 19-679 and transmitted to Congress for its review. D.C. Law 19-311 became effective on May 1, 2013.

Editor’s notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2, provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 5-652. Presumption as to disability or death from heart disease, hypertension, or respiratory disease. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 652, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — See note to § 5-651.

Editor’s notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2,

provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 5-653. Presumption as to disability or death from cancer. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 653, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — See note to § 5-651.

Editor’s notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2,

provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 5-654. Presumption as to disability or death from infectious disease. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 654, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — See note to § 5-651.

Editor's notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2,

provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 5-655. Disqualification from presumption as to disability or death. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 655, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — See note to § 5-651.

Editor's notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2,

provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 5-656. Applicability. [Not funded].

[Not funded].

(Sept. 30, 2004, D.C. Law 15-194, § 656, as added May 1, 2013, D.C. Law 19-311, § 2, 60 DCR 3425.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-311 added this section.

Legislative history of Law 19-311. — See note to § 5-651.

Editor's notes. — Section 656 of D.C. Law 15-194, as added by D.C. Law 19-311, § 2,

provided that this subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

CHAPTER 7. POLICE AND FIREFIGHTERS RETIREMENT AND DISABILITY.

Subchapter I. Retirement and Disability, 1916 Sec.

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Subchapter I. Retirement and Disability, 1916.

§ 5-701. Definitions.

Wherever used in this subchapter:

(1)(A) The term “member” means any officer or member of the Metropolitan Police force, of the Fire Department of the District of Columbia, of the United States Park Police force, of the United States Secret Service Uniformed Division, and any officer or member of the United States Secret Service Division to whom this subchapter shall apply, but does not include an officer or member of the United States Park Police force, of the United States Secret Service Uniformed Division, or of the United States Secret Service Division, whose service is employment for the purposes of title II of the Social Security Act and chapter 21 of the Internal Revenue Code of 1986, and who is not excluded from coverage under chapter 84 of title 5, United States Code, by operation of § 8402 of such title.

(B) [Not funded].

(2) The terms “disabled” and “disability” mean disabled for useful and efficient service in the grade or class of position last occupied by the member by reason of disease or injury, not due to vicious habits or intemperance as determined by the Board of Police and Fire Surgeons, or willful misconduct on his part as determined by the Mayor.

(3) The term “widow” means the surviving wife of a member or former member if:

(A) She was married to such member or former member:

(i) While he was a member; or

(ii) For at least 1 year immediately preceding his death; or

(B) She is the mother of issue by such marriage.

(4) The term “widower” means the surviving husband of a member or former member if, in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the surviving husband of a member or former member who was a member or officer of the Metropolitan Police force or the Fire Department of the District of Columbia if:

(A) He was married to such member or former member:

(i) While she was a member; or

(ii) For at least 1 year immediately preceding her death; or

(B) He is the father of issue by such marriage.

(5)(A) The term “child” means an unmarried child, including:

(i) An adopted child; and

(ii) A stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of 18 years; or

(iii) Such unmarried child regardless of age who, because of physical or mental disability incurred before the age of 18, is incapable of self-support.

(B) The term "student child" means an unmarried child who is a student between the ages of 18 and 22 years, inclusive, and who is regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

(6) The term "basic salary" means regular salary established by law or regulation, including any differential for special occupational assignment, but shall not include overtime, holiday, or military pay.

(7) The term "annuitant" means any former member who, on the basis of his service, has met all requirements of this subchapter for title to annuity and has filed claim therefor.

(8) The term "survivor" means a person who is entitled to annuity under this subchapter based on the service of a deceased member or of a deceased annuitant.

(9) The term "survivor annuitant" means a survivor who has filed claim for annuity.

(10) The term "police or fire service" means all honorable service in the Metropolitan Police Department, United States Secret Service Uniformed Division, Fire Department of the District of Columbia, the United States Park Police force, and the United States Secret Service Division coming under the provisions of this act [subchapter].

(11) The term "military service" means honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, but shall not include service in the National Guard except when ordered to active duty in the service of the United States.

(12) The term "Mayor" means the Mayor of the District of Columbia or his designated agent or agents.

(13) The term "service" means employment which is creditable under § 5-704.

(14) The term "government" means the executive, judicial, and legislative branches of the United States government, including government owned or controlled corporations and Gallaudet College, and the municipal government of the District of Columbia.

(15) The term "government service" means honorable active service in the executive, judicial, or legislative branches of the United States government, including government owned or controlled corporations, and Gallaudet College, and the municipal government of the District of Columbia, and for which retirement deductions, other than social security deductions, were made.

(16) The term "department" means any part of the executive branch of the United States government, or any part of the government of the District of Columbia whose members come under this subchapter.

(17) The term "average pay" means the highest annual rate resulting from averaging the member's rates of basic salary in effect over any 36 consecutive months of police or fire service in the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and who first becomes such a member after the end of the 90-day period beginning on November 17, 1979, or over any 12 consecutive months of

police or fire service in the case of any other member, with each rate weighted by the time it was in effect, except that if the member retires under § 5-710 and if on the date of his retirement under the section he has not completed 12 consecutive months or 36 consecutive months, as the case may be, of police or fire service, such term means his basic salary at the time of his retirement.

(18) The term “adjusted average pay” means the average pay of a member who was an officer or member of the United States Secret Service Uniformed Division, the United States Secret Service Division, the Metropolitan Police force or the Fire Department of the District of Columbia increased by the per centum increase (adjusted to the nearest one tenth of 1%) in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, between the month in which such member retires and the month immediately prior to the month in which such member dies; except that in the case of members hired on or after the first day of the first pay period that begins after October 29, 1996, the increase shall not exceed 3% per annum.

(19) The term “full range of duties” means the ability of a sworn member of the Metropolitan Police Department or the Fire and Emergency Medical Services Department to perform all of the essential functions of police work or fire suppression as determined by the established policies and procedures of the Metropolitan Police Department or the Fire and Emergency Medical Services Department and to meet the physical examination and physical agility standards established under §§ 5-107.02a and 5-451.

(20) The term “Internal Revenue Code” or “Internal Revenue Code of 1986” means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.).

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(a); as added Aug. 21, 1957, 71 Stat. 391, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, §§ 1(1), (2); Dec. 7, 1970, 84 Stat. 1392, Pub. L. 91-532, § 1(a); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(1); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(a), (d)(1); Oct. 1, 1976, D.C. Law 1-87, § 8(a), 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 96-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 201, 206(a)(2); Jan. 8, 1988, 101 Stat. 1745, Pub. L. 100-238, § 103(d); Feb. 5, 1994, D.C. Law 10-68, § 13, 40 DCR 6311; Nov. 19, 1995, 109 Stat. 504, Pub. L. 104-52, § 630(a); Apr. 9, 1997, D.C. Law 11-218, § 2(a), 43 DCR 6172; Sept. 30, 2004, D.C. Law 15-194, § 602(a), 51 DCR 9406; Mar. 2, 2007, D.C. Law 16-191, § 26, 53 DCR 6794; Mar. 31, 2009, D.C. Law 17-356, § 3(a), 56 DCR 1614; May 1, 2013, D.C. Law 19-314, § 2(a), 60 DCR 3466.)

Section references. — This section is referenced in § 1-632.03, § 1-702, § 1-712, § 1-732, § 1-901.02, § 5-631, § 5-702, § 5-704, § 7-2203, § 10-505.03, and § 10-505.04.

Effect of amendments.

The 2013 amendment by D.C. Law 19-314 added (20).

Legislative history of Law 19-314. — Law 19-314, the “Police and Firefighter’s Retirement and Disability Omnibus Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1019. The Bill was adopted on first and second readings on December 4, 2012 and December 18, 2012, respectively. Signed by the Mayor on March 1, 2013, it was assigned Act No. 19-682 and transmitted to Congress for its review. D.C. Law 19-314 became effective on May 1, 2013.

ment and Disability Omnibus Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1019. The Bill was adopted on first and second readings on December 4, 2012 and December 18, 2012, respectively. Signed by the Mayor on March 1, 2013, it was assigned Act No. 19-682 and transmitted to Congress for its review. D.C. Law 19-314 became effective on May 1, 2013.

§ 5-704. Creditable service.

(a) A member's service for the purposes of this subchapter shall mean all police or fire service and such military and government service as is authorized by such sections prior to the date of separation upon which title to annuity is based.

(b)(1) Each member shall be allowed credit for periods of military service served prior to the date of the separation upon which the annuity is based; however, if a member is awarded retired pay on account of military service, such military service shall not be included, unless such retired pay is awarded on account of a service-connected disability:

(A) Incurred in combat with an enemy of the United States; or

(B) Caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part I, paragraph I, or is awarded under §§ 101, 676, 1001, 1332 to 1337, 1401, 3966, 6017, 6034, 6323, and 8966 of Title 10, United States Code.

(2) Nothing in this subchapter shall affect the rights of members to retired pay, pension, or compensation in addition to the annuity herein provided. Notwithstanding any other provision to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with section 414(u) of the Internal Revenue Code.

(c) Credit shall be allowed for leaves of absence granted a member while performing military service, excluding from credit so much of any other leaves of absence without pay as may exceed 6 months in the aggregate in any calendar year.

(d) A member who, during any war or national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service shall not be considered, for the purposes of this subchapter, as separated from his position by reason of such military service, unless he shall apply for and receive his salary deductions: provided, that such member shall not be considered as retaining such position beyond December 31, 1957, or the expiration of 5 years of such military service, whichever is later.

(e)(1) A member shall be allowed credit for government service performed prior to appointment in any of the departments mentioned in paragraph (1) of § 5-701, if such member deposits a sum equal to the entire amount, including interest (if any), refunded to him for such period of government service. A member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia shall deposit such sum, plus interest computed in accordance with paragraph (2) of this subsection, with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712. All other members shall deposit such sums with the District of Columbia Retirement Board for credit to the revenues of the District of Columbia. If the member so elects, he may deposit the total amount of such refund in monthly installments not exceeding 24, except that in the case of a member who is an officer or member of the United States Park Police force, the

United States Secret Service Uniformed Division, or the United States Secret Service Division, such monthly installments shall be of equal amounts. No deposit shall be required for days of unused sick leave credited under § 5-712.

(2) Interest required on deposits under this subsection for members who are officers or members of the Metropolitan Police force or the Fire Department of the District of Columbia shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the District of Columbia Retirement Board) is equal to the average rate of return on investment (adjusted to the nearest one eighth of 1%) for the District of Columbia Police Officers and Fire Fighters' Retirement Fund (established by § 1-712) for the period beginning on the 1st day of the 1st month which begins after the end of the service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if he makes a lump-sum payment or during which he makes the 1st monthly payment if he makes monthly payments, except that for so much of any such period which precedes October 1, 1981, the average rate of interest on interest-bearing obligations of the United States forming a part of the public debt (adjusted to the nearest one eighth of 1%) shall be used in determining the interest rate to be paid on deposits under this subsection;

(B) Interest shall be payable for the period beginning on the 1st day of the 1st month which begins after the end of the period of service with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made; and

(C) If a member elects to make his deposit in monthly installments, each monthly payment shall include interest on that portion of the refund which is then being redeposited.

(f)(1) Any period of time during which a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia is on approved leave without pay to serve as a full-time officer or employee of a labor organization shall be considered to be police or fire service for purposes of this subchapter if such member files an election in accordance with paragraph (2) of this subsection and makes payments as described in paragraph (3) of this subsection. The basic salary in effect at any time for the grade in which a member was serving at the time he entered on approved leave described in the preceding sentence shall be considered to be the basic salary in effect for such member for purposes of this subchapter if the period of time when such member is on approved leave is considered to be police or fire service under this subsection.

(2) To be eligible to have any period of approved leave described in paragraph (1) of this subsection considered to be police or fire service for purposes of this subchapter, a member described in such paragraph must, not later than the end of the 60-day period commencing on the day such member enters on such approved leave or the effective date of this subsection, whichever occurs later, file an election with the [District of Columbia Retirement Board] to have such period of approved leave considered to be police or fire service for purposes of this subchapter.

(3)(A) To have any period of approved leave described in paragraph (1) of this subsection occurring after the effective date of this subchapter considered

to be police or fire service, a member described in such paragraph must each month deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712 a sum equal to one-twelfth the annual new entrant normal cost of the annuity of a member receiving the basic salary in effect during such month for the grade in which such member was serving at the time such member entered on such leave.

(B) To have any period of approved leave described in paragraph (1) of this subsection which occurred before the effective date of this subchapter considered to be police or fire service, a member described in such paragraph must deposit with the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712, in a manner to be determined by the District of Columbia Retirement Board, a sum equal to the new entrant normal cost of the annuity of a member receiving the basic salary in effect during the period of such leave for the grade in which such member was serving at the time such member entered on such leave.

(C) The District of Columbia Retirement Board shall make an annual determination of the new entrant normal cost for purposes of subparagraphs (A) and (B) of this paragraph according to information supplied by the actuary retained pursuant to § 1-722.

(4) For purposes of this subsection, the term "labor organization" means any labor organization recognized as an exclusive representative of members or officers of the Metropolitan Police force or the Fire Department of the District of Columbia for purposes of collective bargaining pursuant to § 1-617.10.

(g) The total service of a member shall be the full years and 12th parts thereof, excluding from the aggregate any fractional part of a month.

(h)(1) Except as provided in paragraph (2) of this subsection, notwithstanding any other provision of this section, any military service (other than military service covered by military leave with pay from a civilian position) performed by an individual after December 1956 shall be excluded in determining the aggregate period of service upon which an annuity payable under this act to such individual or to the surviving spouse or child is to be based, if such individual or the surviving spouse or child is entitled (or would upon proper application be entitled), at the time of such determination, to monthly old age or survivors benefits under § 202 of the Social Security Act based on such individual's wages and self-employment income. If in the case of the individual or the surviving spouse such military service is not excluded under the preceding sentence, but upon attaining retirement age (as defined in § 216(a) of the Social Security Act) he or she becomes entitled (or would upon proper application be entitled) to such benefits, the District of Columbia Retirement Board shall re-determine the aggregate period of service upon which such annuity is based, effective as of the 1st day of the month in which he or she attains such age, so as to exclude such service. The Secretary of Health and Human Services shall, upon the request of the Mayor, inform the Mayor whether or not any such individual or the surviving spouse or child is entitled

at any specified time to such benefits; and the Mayor shall forward this information to the District of Columbia Retirement Board.

(2)(A)(i) Except as provided in sub-subparagraph (ii) of this subparagraph, and subject to subparagraph (D) of this paragraph, each member or former member who has performed military service before the date of the separation on which the entitlement to any annuity under this act is based may elect to retain credit for the service by paying (in accordance with such regulations as the District of Columbia Retirement Board shall issue) to the office by which the member is employed (or, in the case of a former member, to the appropriate benefits administrator) an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37, United States Code, to the member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the member may provide, or, if the District of Columbia Retirement Board determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the District of Columbia Retirement Board under subparagraph (C) of this paragraph. Payment of such amount by an active member must be completed prior to the member's date of retirement or October 1, 2006, whichever is later, for the member to retain credit for the service.

(ii) In any case where military service interrupts creditable service under this section and reemployment pursuant to chapter 43 of title 38, United States Code [38 U.S.C. § 4301 et seq.], occurs on or after August 1, 1990, the deposit payable under this subparagraph may not exceed the amount that would have been deducted and withheld under this act from basic pay during the period of creditable service if the member had not performed the period of military service.

(B) Any deposit made under subparagraph (A) of this paragraph more than 2 years after the later of:

(i) October 1, 2004; or

(ii) The date on which the member making the deposit first becomes a member following the period of military service for which such deposit is due, shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the 2-year period. The interest rate that is applicable in computing interest in any year under this subsection shall be equal to the interest rate that is applicable for such year under subsection (e)(2).

(C) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the District of Columbia Retirement Board as the District of Columbia Retirement Board may determine to be necessary for the administration of this section; and the Mayor shall forward this information to the District of Columbia Retirement Board.

(D) Effective with respect to any period of military service after November 10, 1996, the percentage of basic pay under 37 U.S.C. § 204, payable under subparagraph (A) of this paragraph shall be equal to the same percentage as

would be applicable under § 5-706 for that same period for service as a member subject to subparagraph (A)(2) of this paragraph.

(i)(1) Any member who is an officer or member of the District of Columbia Fire and Emergency Medical Services Department who was transferred pursuant to § 5-409.01, and who elects to, shall be covered by Chapter 9 of Title 1, and shall receive credit for prior years of service within the District of Columbia Fire and Emergency Medical Services Department as provided in subparagraphs (2), (3), and (4) of this subsection.

(2) Solely for the purposes of determining vesting and retirement eligibility, members shall receive credit for prior service with the District of Columbia Fire and Emergency Medical Services Department.

(3) Members shall be eligible to purchase benefit accrual service for some or all of the time they were employed by the District of Columbia Fire and Emergency Medical Services Department. The member shall deposit to the credit of the District of Columbia Police Officers and Fire Fighters' Retirement Fund an amount that is equal to the dollar increase in the present value of future benefits which results from crediting the prior service. The present value of future benefits shall be calculated on the actuarial assumptions and methods used to calculate the present value of future benefits pursuant to § 1-907.03(a)(3)(B) for the applicable fiscal year. Upon separation from District of Columbia employment for reasons other than retirement, any firefighter who purchased prior service credit shall receive that purchased amount along with any interest credited to the amount. Any firefighter who withdraws the purchased amount and is later reinstated shall not be entitled to this prior service credit until the purchased amount plus interest is again deposited.

(4) For the purposes of this section, the term "prior service" means any prior service in the District of Columbia Fire and Emergency Medical Services Department, regardless of whether there is a break in service.

(j) Service as a retired police officer hired pursuant to § 5-761, shall not count as creditable service for the purposes of this section.

(k)(1) An employee hired as a lateral law enforcement officer pursuant to § 1-610.72, shall be covered by Chapter 9 of Title 1. These lateral law enforcement officers shall be treated as new hires for retirement purposes and for the purposes of this section except as provided by law for federal government and military service and as provided by subparagraph (B) of this paragraph.

(2) In computing length of service of a retiring lateral law enforcement officer hired pursuant to § 1-610.72, credit shall be granted for prior law enforcement service outside the Metropolitan Police Department only if the lateral law enforcement officer has deposited to the credit of the Police Officers' and Firefighters' Retirement Fund an amount equal to the dollar increase in the present value of future benefits that results from crediting the prior service. The calculation of the present value of future benefits shall be based on the actuarial assumptions and methods used to calculate the present value of future benefits pursuant to § 1-907.03(a)(3)(B) for the applicable fiscal year. Upon separation from District law enforcement duty for reasons other than retirement, any law enforcement officer who purchased prior service credit

shall receive that purchase amount along with any interest credited on the amount. Any law enforcement officer that withdraws the purchase amount and is later reinstated shall not be entitled to this prior service credit until the purchase amount plus interest is again deposited.

(l) Service as a former Metropolitan Police Department detective hired as a detective advisor pursuant to § 5-129.31 [expired] shall not count as creditable service for the purposes of this section.

(Sept. 1, 1916, ch. 433, § 12(c); Aug. 21, 1957, 71 Stat. 392, Pub. L. 85-157, § 3; Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(2); Oct. 1, 1976, D.C. Law 1-87, § 9, 23 DCR 2544; Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 202(a), 208(a)(2); Mar. 24, 1990, D.C. Law 8-97, § 5, 37 DCR 1046; Oct. 3, 2001, D.C. Law 14-28, § 203, 48 DCR 6981; Nov. 22, 2003, 117 Stat. 1386, Pub. L. 108-133, § 2; Mar. 13, 2004, D.C. Law 15-105, § 39, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 13(a), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(a), 53 DCR 6794; Mar. 31, 2009, D.C. Law 17-356, § 3(b), 56 DCR 1614; May 1, 2013, D.C. Law 19-314, § 2(b), 60 DCR 3466.)

Section references. — This section is referenced in § 1-903.01, § 5-544.01, § 5-701, § 5-705, § 5-706, § 5-723.01, § 5-761, § 5-762, § 6-223, and § 10-505.05.

Effect of amendments.

The 2013 amendment by D.C. Law 19-314 added the last sentence in (b)(2).

Legislative history of Law 19-314. — See note to § 5-701.

§ 5-706. Deductions, deposits, and refunds; order of persons entitled to refunds for deductions.

(a) On and after the first day of the first pay period that begins on or after October 26, 1970, there shall be deducted and withheld from each member's basic salary an amount equal to 7% of such basic salary for all members hired before the first day of the first pay period that begins after October 29, 1996, and 8% of such basic salary for all members hired on or after the first day of the first pay period that begins after October 29, 1996. In the case of a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, these deductions and withholdings shall be paid to the District of Columbia Retirement Board and shall be deposited in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712, and in the case of any other member, these deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia and shall be deposited in the Treasury to the credit of the District of Columbia. Amounts deducted and withheld from the basic salary of each member of the District of Columbia Fire and Emergency Medical Services Department shall be:

(1) Picked up by the District of Columbia Fire and Emergency Medical Services Department, as described in section 414(h)(2) of the Internal Revenue Code of 1986;

(2) Deducted and withheld from the annual salary of the members as salary reduction contributions;

(3) Paid by the District of Columbia Fire and Emergency Medical Services Department to the Custodian of Retirement Funds (as defined in § 1-702(6)); and

(4) Made a part of the member's annuity benefit.

(b)(1) Any member who is an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, who is separated from his department, except for retirement as authorized by this subchapter, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(2) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia with less than 5 years of police or fire service who is separated from his department, except for retirement under § 5-709, § 5-710, or § 5-712, shall be refunded the amount of the deductions made from his salary under this subchapter. The receipt of payment of such deductions by such member shall void all annuity rights under this subchapter, except that if such member is subsequently reappointed to any department whose members come under this subchapter and such member elects, at the time of such reappointment, to redeposit the amount refunded to him pursuant to the preceding sentence plus interest computed in accordance with § 5-717(c), then credit shall be allowed under this subchapter for the prior period of service. Such redeposit (and the interest required thereon) may be made, at the election of the member, in a lump sum or in not to exceed 60 monthly installments, except that if such member dies before depositing the full amount due under the preceding sentence, the requirements of such sentence shall be deemed to have been met.

(c) In order to facilitate the settlement of the accounts of each member coming under the provisions of this subchapter who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the District of Columbia Retirement Board shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

(1) To the beneficiary or beneficiaries designated in writing by such member, filed with the District of Columbia Retirement Board and received by him prior to the death of such member;

(2) If there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such member, or the survivor of them;

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member; provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(d) In order to facilitate the settlement of the accounts of each former member coming under the provisions of this subchapter who dies leaving no survivor entitled to receive an annuity under the provisions of this subchapter and before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the District of Columbia Retirement Board shall pay the difference to the person or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery by any other person of the amount so paid:

(1) To the beneficiary or beneficiaries designated in writing by such former member, filed with the District of Columbia Retirement Board and received by him prior to the death of such former member;

(2) If there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

(3) If there be none of the above, to the parents of such former member, or the survivor of them; and

(4) If there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: provided, that if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia, except that if the member was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, no payment shall be made if no natural person is determined to be entitled thereto.

(e) An individual withdrawing a distribution under this subchapter, which distribution constitutes an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986, may elect, at the time and in the manner prescribed by the District of Columbia Retirement Board, and after receipt of proper notice, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan, within the meaning of section 402(c) of the Internal Revenue Code of 1986, in a direct rollover in accordance with section 401(a)(31) of the Internal Revenue Code of 1986.

(f) The District of Columbia Retirement Board shall be entrusted with any transfer from another retirement plan for the purchase of service credit, including transfers allowed by sections 403(b) and 457 of the Internal Revenue Code of 1986 [26 U.S.C. § 403; 26 U.S.C. § 457]. Before any transfer is received, the District of Columbia Retirement Board shall be presented with

documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed transfers for the purchase of service credit.

(g)(1) The District of Columbia Retirement Board shall also be entrusted with a rollover contribution from an eligible retirement plan, including:

(A) A qualified plan described in sections 401(a) or 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(B) An annuity contract described in section 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(C) An eligible plan under section 457(b) of the Internal Revenue Code of 1986, which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state; or

(D) Amounts transferred from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code of 1986 that is eligible to be rolled over and would otherwise be includible in gross income.

(2) The rollover shall be separately accounted for as member contributions that were not previously taxed. Before any rollover is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed rollover contributions. The rollover shall be used to purchase service credit in addition to service credit provided under the provisions of § 5-704.

(h) The provisions of this subchapter shall constitute a defined benefit plan and a governmental plan as described in section 414(d) of the Internal Revenue Code of 1986, which is intended to qualify under section 401(a) of the Internal Revenue Code. Notwithstanding anything to the contrary contained in this subchapter, Chapter 7 of Title 1 (§ 1-701 et seq.), or Chapter 9 of Title 1 (§ 1-901 et seq.), the provisions of this subchapter shall apply to and control the provision of an annuity payable. The District of Columbia Retirement Board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan pursuant to the Internal Revenue Code of 1986. If a conflict should arise with a qualification requirement, the provision shall be interpreted in favor of maintaining the federal qualification requirements.

(i) The District of Columbia Retirement Board may adopt rules to implement this section.

(j) Effective January 1, 2007, benefits payable under this subchapter shall not be paid until at least 30 days (or shorter period as may be permitted by law) but no more than 180 days after a member's receipt of all required distribution notices and election forms pursuant to section 402(f) of the Internal Revenue Code of 1986. The required notices must include a description of the member's right (if any) to defer receipt of a distribution, the consequences of failing to defer receipt of the distribution, the relative value of optional forms of benefit, and other information as may be required by applicable regulations and guidance.

(k) Notwithstanding any provisions of this subchapter to the contrary, upon the employer's request, a contribution which was made by a mistake of fact

shall be returned to the employer by the trustee within one year after the payment of the contribution. A portion of a contribution returned pursuant to this section shall be adjusted to reflect any earnings or gains. Notwithstanding any provisions of this subchapter to the contrary, the right or claim of a participant or beneficiary to an asset of the trust or a benefit under this subchapter shall be subject to and limited by the provisions of this subsection.

(l) For the purposes of this section, the term:

(1) "Direct rollover" means a payment to the eligible retirement plan specified by the distributee described in section 402(e)(6) of the Internal Revenue Code of 1986.

(2) "Distributee" means a member or former member. In addition, the member's or former member's surviving spouse is a distributee with regard to the interest of the spouse or former spouse. A non-spouse beneficiary of a deceased member is also a distributee for the purposes of this subchapter; provided, that in the case of a non-spouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity under section 408 of the Internal Revenue Code of 1986 that is established on behalf of the non-spouse beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Internal Revenue Code of 1986. The determination of the extent to which a distribution to a non-spouse beneficiary is required under section 401(a)(9) of the Internal Revenue Code of 1986 shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(3) "Eligible retirement plan" means:

(A) An individual retirement account described in section 408(a) of the Internal Revenue Code of 1986, including a Roth IRA described in section 408A of the Internal Revenue Code of 1986;

(B) An individual retirement annuity described in section 408(b) of the Internal Revenue Code of 1986, including a Roth IRA described in section 408A of the Internal Revenue Code of 1986;

(C) A qualified trust described in section 401(a) of the Internal Revenue Code of 1986 or an annuity plan described in section 403(a) of the Internal Revenue Code of 1986 that accepts the distributee's eligible rollover distribution;

(D) An annuity contract described in section 403(b) of the Internal Revenue Code of 1986 that accepts the distributee's eligible rollover distribution; and

(E) An eligible plan described in section 457(b) of the Internal Revenue Code of 1986 that is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state that accepts the distributee's eligible rollover distribution and agrees to account separately for amounts transferred into such plan from the arrangement described under this subsection. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(4) "Eligible rollover distribution," within the meaning of section 402(c) of the Internal Revenue Code of 1986, is a distribution of all or a portion of the

balance to the credit of the distributee; provided, that an eligible rollover distribution does not include:

(A) A distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; and

(B) A distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code of 1986. A distribution to a nonspouse beneficiary under section 401(f)(2)(A) of the Internal Revenue Code of 1986 is an eligible rollover distribution. A portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, the portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code of 1986 or to a qualified trust or annuity plan described in section 401(a) or 403(a) of the Internal Revenue Code of 1986 or an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 if the trust or annuity plan or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

(Sept. 1, 1916, ch. 433, § 12(d); Aug. 21, 1957, 71 Stat. 393, Pub. L. 85-157, § 3; Aug. 20, 1958, 72 Stat. 686, Pub. L. 85-693, § 1; Oct. 26, 1970, 84 Stat. 1136, Pub. L. 91-509, § 1(13); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 122(b)(1), 208(a)(1); Apr. 9, 1997, D.C. Law 11-218, § 2(b), 43 DCR 6172; Oct. 1, 2002, D.C. Law 14-190, § 3722(a), 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 40(a), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 13(b), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(b), 53 DCR 6794; May 1, 2013, D.C. Law 19-314, § 2(c), 60 DCR 3466.)

Section references. — This section is referenced in § 1-712, § 1-903.01, § 5-704, § 5-717, and § 5-741.

Effect of amendments.

The 2013 amendment by D.C. Law 19-314

rewrote (a), (e), (g)(1), and (h); and added (j), (k), and (l).

Legislative history of Law 19-314. — See note to § 5-701.

§ 5-712. Optional retirement.

(a) Any member who first becomes employed on or after the first day of the first pay period that begins after October 29, 1996, and who completes 25 years of service, and gives at least 60 days written advanced notice to his department stating his intention to retire and stating the date of which he will retire, may voluntarily retire from the service and shall be entitled to an annuity computed at a rate of 2.5% of the member's average pay times the number of years of the member's creditable service; provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver; provided further, that whenever the Mayor shall determine that there exists an emergency which is likely to endanger the

safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this subsection, then the Mayor shall be authorized, upon notice to the District of Columbia Retirement Board, to suspend the retirement provisions of this subsection in any 1 or more of the departments under his jurisdiction until such time as, in the opinion of the Mayor, public safety can be adequately protected without such suspension. Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia and first becomes such a member after the end of the 90-day period beginning on November 17, 1979, and who completes 25 years of police or fire service and attains the age of 50 years and any other member (other than a member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who first becomes such a member after the end of such 90-day period) who completes 20 years of police or fire service may, after giving at least 60 days written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of $2\frac{1}{2}$ of his average pay for each year of service; except that the rate of 3% of his average pay shall be used to compute each year's police or fire service in excess of:

(1) Twenty-five years, in the case of a member who becomes a member after the end of such 90-day period; or

(2) Twenty years, in the case of any other member; provided that such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver; provided further, that whenever the Mayor or the Chief of the United States Secret Service Uniformed Division, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service Division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this subsection, then the Mayor or any of said Chiefs shall be authorized to suspend the retirement provisions of this subsection in any 1 or more of the departments under their respective jurisdictions until such time as, in the opinion of the Mayor or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(a-1) For the purposes of the first sentence of subsection (a) of this section, the term "creditable service" means the period of employment with the Metropolitan Police Department for police officers and the Fire Department of the District of Columbia for fire fighters first employed on or after the first day of the first pay period which begins after October 29, 1996, and includes any United States military service including the following:

(1) Credit for periods of military service prior to the member's date of separation, that interrupts the member's service with the Department, unless the member applies for and receives a refund of the member's salary deductions; and

(2) Credit for any period of time during which a member is on approved leave without pay to serve as a full-time officer or employee of a labor organization.

(a-2) Notwithstanding any other law, rule, or regulation, sworn members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department hired before or on September 11, 2008, may make a one-time election, at their option, in writing, to participate in one of the retirement programs created by subsection (a) of this section; provided, that any and all additional costs above the costs which would otherwise be incurred by the District for that sworn member pursuant to subsection (a) of this section shall be paid by the member, as determined by actuaries appointed by the District of Columbia. The District shall not be responsible for any additional administrative or program costs associated with a retirement program transfer authorized by this subsection. All costs associated with the transfer to a new retirement program under this subsection shall be borne by the member.

(a-3) Notwithstanding any other law, rule, or regulation, sworn members of the Metropolitan Police Department and the Fire and Emergency Medical Services Department hired after September 11, 2008, shall make a one-time election, at their option, in writing, to participate in one of the retirement programs created by subsection (a) of this section; provided, that any and all additional costs above the costs which would otherwise be incurred by the District for that sworn member pursuant to subsection (a) of this section shall be paid by the member, as determined by actuaries appointed by the District of Columbia. The District shall not be responsible for any additional administrative or program costs associated with a retirement program selection authorized by this subsection. All costs associated with the selection of a retirement program under this subsection shall be borne by the member.

(b) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of 60 years shall, in the discretion of the Mayor, and any member of the United States Secret Service Uniformed Division or of the United States Park Police force or of the United States Secret Service Division to whom this subchapter apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed under subsection (a) of this section.

(c) No annuity granted under subsection (a) or (b) of this section shall exceed 80% of the average pay of such member.

(d) In computing an annuity under this section, the police or fire service of a member who has not retired prior to the effective date of this subsection shall include, without regard to the limitation imposed by subsection (c) of this section, the days of unused sick leave credited to him. Days of unused sick leave shall not be counted in determining a member's eligibility for an annuity under this section.

(e) Any member who is an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia who completes 18 years of police or fire service may voluntarily retire from the service on or before December 31, 1980, and shall be entitled to an annuity computed at the rate of 2½% of the average pay of such member or officer for each year of service; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Police Officers and Fire Fighters'

Retirement Fund shall be made from appropriations of the Metropolitan Police and Fire Departments.

(f) Notwithstanding the first sentence of subsection (a) of this section, Charles H. Ramsey, Chief of Police, may voluntarily retire from the service and, effective April 21, 1998, the date of his appointment as Chief of Police, shall be entitled to an annuity computed at a rate of 3.43% of his average pay times the number of years of his creditable service.

(g) Notwithstanding the first sentence of subsection (a) of this section, at the time that Chief of Police Cathy L. Lanier voluntarily retires or is otherwise separated from the Metropolitan Police Department, she shall be entitled to an annuity computed at 71.5% of her average highest base pay for 36 consecutive months, including longevity payments.

(h) A member who meets the requirements for receiving an annuity under this subchapter, but for the fact that the member has not yet retired, shall be 100% vested in the member's annuity.

(i) Each year, the District of Columbia Retirement Board shall set the applicable interest rate, mortality table, and cost-of-living factor to be used in the determination of actuarial equivalents or for other pertinent benefit calculations under the provisions of this subchapter.

(Sept. 1, 1916, ch. 433, § 12(h); Aug. 21, 1957, 71 Stat. 395, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(5), (6); Aug. 29, 1972, 86 Stat. 641, Pub. L. 92-410, title II, § 201(a)(3); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(1)-(3); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 203; Mar. 4, 1981, D.C. Law 3-128, § 8, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 4, 27 DCR 4417; Apr. 9, 1997, D.C. Law 11-218, § 2(c), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 13(c), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 27(d), 53 DCR 6794; Mar. 2, 2007, D.C. Law 16-199, § 4, 53 DCR 8832; May 13, 2008, D.C. Law 17-154, § 7, 55 DCR 3678; Sept. 11, 2008, D.C. Law 17-224, § 2, 55; May 1, 2013, D.C. Law 19-314, § 2(d), 60 DCR 3466.)

Section references. — This section is referenced in § 5-105.05, § 5-704, § 5-706, § 5-716, and § 5-717.

Legislative history of Law 19-314. — See note to § 5-701.

Effect of amendments.

The 2013 amendment by D.C. Law 19-314 added (h) and (i).

§ 5-716. Survivor benefits and annuities.

(a) If any member:

(1) dies in the performance of duty and the Mayor determines that:

(A) the member's death was the sole and direct result of a personal injury sustained while performing such duty;

(B) his death was not caused by his willful misconduct or by his intention to bring about his own death; and

(C) intoxication of the member was not the proximate cause of his death; and

(2) is survived by a survivor, parent, or sibling,

a lump-sum payment of \$50,000 shall be made to his survivor if the survivor received more than one half of his support from such member, or if such member is not survived by any survivor (including a survivor who did not receive more than one half of his support from such member), to his parent or sibling if the parent or sibling received more than one half of his support from such member. If such member is survived by more than 1 survivor entitled to receive such payment, each such survivor shall be entitled to receive an equal share of such payment; or if such member leaves no survivor and more than 1 parent or sibling who is entitled to receive such payment, each such parent or sibling shall be entitled to receive an equal share of such payment.

(a-1) In the case of any member who dies in the performance of duty after December 29, 1993, and leaves a widow or widower entitled to all or a portion of the benefit described in subsection (a) of this section, an additional annuity shall be paid. This annuity shall be equal to 100% of the member's pay at the time of death. The annuity shall be increased at the same rate as the change in the Consumer Price Index, as described in § 5-721. This benefit shall be paid in lieu of benefits provided for by subsections (b) and (c) of this section. However, after benefits provided for in this paragraph end, as provided in subsection (e) of this section, any remaining benefit pursuant to subsection (c) of this section shall commence to be paid.

(a-2) The determination of the Mayor authorized by subsection (a) of this section shall be subject to review and final determination by the District of Columbia Retirement Board.

(b) In case of the death of any member before retirement, of any former member after retirement, or of any member entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of:

(1) Forty per centum of such member's average pay at the time of death, or 40%:

(A) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division; or

(B) Of the adjusted average pay of such former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia; or

(2) Forty per centum of the corresponding salary for step 6 of salary class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death, or, for a member who was an officer or member of the United States Secret Service Uniformed Division, or the United States Secret Service Division, 40 percent of the corresponding salary for step 5 of the Officer rank in section 10203 of title 5, United States Code; provided, that such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(c) Each surviving child or student child of any member who dies before retirement, of any former member who dies after retirement, or of any member

entitled to receive an annuity under § 5-717 (regardless of whether such member is receiving such annuity at the time of death), shall be entitled to receive an annuity equal to the smallest of:

(1) In the case of a member or former member who is survived by a wife or husband:

(A) Sixty per centum of:

(i) The member's average pay at the time of death; or

(ii) The adjusted average pay of the former member in the case of a member who was an officer or member of the United States Park Police force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, or the adjusted average pay of the former member in the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, divided by the number of eligible children;

(B) \$2,918.00, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718; or

(C) \$8,754.00, divided by the number of eligible children, to be increased on an annual basis by the cost of living adjustment determined pursuant to § 5-718, divided by the number of eligible children; and

(2) In the case of a member or former member who is not survived by a wife or husband:

(A) 75% of the member's average pay at the time of death, divided by the number of eligible children;

(B) In the case of a member who was an officer or member of the United States Park Police Force, the United States Secret Service Uniformed Division, or the United States Secret Service Division, 75% of the adjusted average pay of the former member, divided by the number of eligible children; or

(C) In the case of a member who was an officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia, 75% of the adjusted average pay of the former member, divided by the number of eligible children.

(d) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of this section shall be entitled to receive an annuity in the greater amount of: (1) \$3,144; or (2) thirty-five per centum of the basis upon which such relief or annuity was computed. Each child who, on October 3, 2001, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of subsection (c) of this section.

(e)(1) The annuity of the widow or widower under this section shall begin on the day after the date on which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age 55; provided, that any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce.

(2) The annuity of any child under this section shall begin on the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(A) The child becomes 18 years of age or, if over 18 years of age and incapable of self-support, becomes capable of self-support;

(B) The child marries; or

(C) The child dies.

(3)(A) The annuity of any student child under this section shall begin on the day after the date on which the member or former member dies, and the annuity shall terminate upon whichever of the following occurs first:

(i) The student child marries;

(ii) The student child ceases to be a student;

(iii) The student child reaches 22 years of age; or

(iv) The student child dies.

(B) For the purposes of this subsection, a student child whose 22nd birthday falls on or after July 1st shall not be considered to have reached 22 years of age until the June 30th following the student child's actual 22nd birthday.

(4) If the annuity of a child under paragraph (2) or paragraph (3) of this subsection terminates because of marriage and such marriage ends, the annuity shall resume on the first day of the month in which it ends, but only if the individual is not otherwise ineligible for the annuity.

(5) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, no annuity of a child or student of a widow or widower under subsection (a-1) of this section shall be paid while an annuity benefit to a widow or widower under subsection (a-1) of this section is being paid.

(f) Any member retiring under § 5-709, § 5-710, or § 5-712, may at the time of such retirement, and any member entitled to receive an annuity under § 5-717 may at the time such annuity commences, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after such member's death; provided, that the person so designated be the surviving spouse or child of such member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such member is reduced. The annuity payable to the member making such election shall be reduced by 10% of the annuity computed as provided in § 5-709, § 5-710, or § 5-712. Such increase in annuity payable to the designee shall be reduced by 5% for each full 5 years the designee is younger than the member, but such total reduction shall not exceed 40%. The increase in annuity payable to the designee pursuant to this subsection shall be paid in addition to the annuity provided for such designee pursuant to subsection (b) or subsection (c) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to subsections (b), (c), and (e) of this section. If, at any time after such former member's election, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in § 5-709, § 5-710, § 5-712, or § 5-717, as the case may be.

(g) In the event a member to whom this section applies shall die after January 1, 2007, while performing qualified military service, the survivor or survivors of the member shall be entitled to receive any additional benefits provided under this section (other than benefit accruals relating to the period of qualified military service), as if the member resumed employment and then terminated employment on account of death. For the purposes of this subsection, the term “qualified military service” shall mean military service in the uniformed services (as defined in 38 U.S.C. § 43) by a member, if the member is entitled to reemployment rights with respect to such military service, all within the meaning of section 414(u)(5) of the Internal Revenue Code of 1986.

(Sept. 1, 1916, ch. 433, § 12(k); Aug. 21, 1957, 71 Stat. 396, Pub. L. 85-157, § 3; Oct. 26, 1970, 84 Stat. 1137, Pub. L. 91-509, § 1(8); Aug. 29, 1972, 86 Stat. 642, Pub. L. 92-410, title II, § 201(a)(4); Sept. 3, 1974, 88 Stat. 1040, Pub. L. 93-407, title I, § 121(b)(4), (5); Nov. 15, 1977, 91 Stat. 1371, Pub. L. 95-179; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 206(a)(1), 207(a)(2), 209(b); June 22, 1990, D.C. Law 8-145, § 2, 37 DCR 2977; Nov. 19, 1995, 109 Stat. 505, Pub. L. 104-52, § 630(b); Nov. 19, 1997, 111 Stat. 2184, Pub. L. 105-100, § 152(b)(1); Oct. 19, 2000, D.C. Law 13-172, § 1102, 47 DCR 6308; Oct. 3, 2001, D.C. Law 14-28, § 2102, 48 DCR 6981; Apr. 13, 2005, D.C. Law 15-354, § 13(e), 52 DCR 2638; Mar. 21, 2009, D.C. Law 17-321, § 2(a), 56 DCR 222; Oct. 15, 2010, 124 Stat. 3033, Pub. L. 111-282, § 4(b)(5); Sept. 26, 2012, D.C. Law 19-171, § 40, 59 DCR 6190; May 1, 2013, D.C. Law 19-301, § 2, 60 DCR 2310; May 1, 2013, D.C. Law 19-314, § 2(e), 60 DCR 3466.)

Section references. — This section is referenced in § 5-544.01, § 5-702, § 5-714, § 5-718, § 5-719, § 5-721, § 5-723.01, § 5-744, and § 5-747.

Effect of amendments.

The 2013 amendment by D.C. Law 19-301 substituted “age 55” for “age 60” in (e)(1).

The 2013 amendment by D.C. Law 19-314 added (g).

Legislative history of Law 19-301. — Law 19-301, the “Equity in Survivor Benefits

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-570. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-650 and transmitted to Congress for its review. D.C. Law 19-301 became effective on May 1, 2013.

Legislative history of Law 19-314. — See note to § 5-701.

§ 5-723.01. Maximum amount of benefits and contributions.

(a) Benefits and contributions under the provisions of this subchapter shall not be computed with reference to any compensation that exceeds that maximum dollar amount permitted by section 401(a)(17) of the Internal Revenue Code, as adjusted for increases in the cost of living.

(b) Notwithstanding foregoing provisions of this subchapter to the contrary, benefits under this subchapter are subject to the limitations imposed by section 415 of the Internal Revenue Code, as adjusted from time to time and, to that end, effective for limitation years beginning on or after January 1, 2008:

(1)(A) To the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code, and subject to the remainder of this subsection, the maximum monthly benefit to which any member may be

entitled in any limitation year with respect to his or her accrued retirement benefit, as adjusted from time to time pursuant to § 5-718 (the "maximum benefit"), shall not exceed the defined benefit dollar limit (adjusted as provided in this subsection). In addition to the foregoing, to the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code, and subject to the remainder of this subsection, the maximum annual additions for any limitation year shall be equal to the lesser of:

- (i) The dollar limit on annual additions; or
- (ii) 100% of the member's remuneration.

(B) The defined benefit dollar limit and the dollar limit on annual additions shall be adjusted, effective January 1 of each year, under section 415(d) of the Internal Revenue Code in a manner prescribed by the Secretary of the Treasury. The dollar limit as adjusted under section 415(d) of the Internal Revenue Code shall apply to limitation years ending with or within the calendar year for which the adjustment applies, but a member's benefits shall not reflect the adjusted limit before January 1 of that calendar year. To the extent that the monthly benefit payable to a member who has reached the member's termination date is limited by the application of this subsection, the limit shall be adjusted to reflect subsequent adjustments made in accordance with section 415(d) of the Internal Revenue Code of 1986, but the adjusted limit shall apply only to benefits payable on or after January 1 of the calendar year for which the adjustment applies.

(2) Benefits shall be actuarially adjusted based upon the defined benefit dollar limit, as follows:

(A) There shall be an adjustment for benefits payable in a form other than a straight life annuity as follows:

(i) If a monthly benefit is payable in a form other than a straight life annuity, before applying the defined benefit dollar limit, the benefit shall be adjusted in the manner described in sub-subparagraphs (ii) or (iii) of this subparagraph, to the actuarially equivalent straight life annuity that begins at the same time. No actuarial adjustment to the benefit shall be made for:

(I) Benefits that are not directly related to retirement benefits, such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits; or

(II) In the case of a form of benefit not subject to section 417(e)(3) of the Internal Revenue Code of 1986, the inclusion of a feature under which a benefit increases automatically to the extent permitted to reflect cost-of-living adjustments and the increase, if any, in the defined benefit dollar limit under section 415(d) of the Internal Revenue Code of 1986.

(ii) If the benefit of a member is paid in a form not subject to section 417(e) of the Internal Revenue Code, the actuarially equivalent straight life annuity, without regard to cost-of-living adjustments described in this subsection, is equal to the greater of:

(I) The annual amount of the straight life annuity, if any, payable to the member commencing at the same time; or

(II) The annual amount of the straight life annuity commencing at the same time that has the same actuarial present value as the member's form

of benefit, computed using a 5% interest rate and the applicable mortality designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code of 1986.

(iii) If the benefit of a member is paid in a form subject to section 417(e) of the Internal Revenue Code of 1986, the actuarially equivalent straight life annuity is equal to the greatest of:

(I) The annual amount of the straight life annuity having a commencement date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and mortality table or other tabular factor specified in the definition of actuarial equivalent for adjusting benefits in the same form;

(II) The annual amount of the straight life annuity commencing at the time that has the same actuarial present value as the member's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code of 1986; or

(III) The annual amount of the straight life annuity commencing at the same time that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code of 1986, divided by 1.05.

(iv) For the purposes of this subparagraph, whether a form of benefit is subject to section 417(e) of the Internal Revenue Code is determined without regard to the status of this subchapter as a governmental plan as described in section 414(d) of the Internal Revenue Code of 1986.

(B) There shall be an adjustment to benefits that commence before age 62 or after age 65 as follows:

(i) If the benefit of a member begins before age 62, the defined benefit dollar limit applicable to the member at the earlier age shall be an annual benefit payable in the form a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limit applicable to the member at age 62 (adjusted for participation of fewer than 10 years, if applicable) computed using a 5% interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code of 1986. However, if the benefit provided under this subchapter provides an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limit is the lesser of:

(I) The limitation determined under the immediately preceding sentence; or

(II) The defined benefit dollar limit (adjusted for participation of fewer than 10 years, if applicable) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under this subchapter at the age of benefit commencement to the annual amount of the immediately commencing straight life annuity under this subchapter at age 62, both determined without applying the limitations of this section. The adjustment in

this sub-subparagraph shall not apply as a result of benefits paid on account of disability under § 5-709 or § 5-710 or as a result of the death of a member under § 5-716. Notwithstanding the provisions above, a member that qualifies under section 415(b)(2)(G) of the Internal Revenue Code of 1986 is not subject to the adjustment to benefits that commence before age 62.

(ii) If the benefit of a member begins after age 65, the defined benefit dollar limit applicable to the member at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limit applicable at age 65 (adjusted for participation of fewer than 10 years, if applicable) computed using a 5% interest rate assumption and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code. However, if the benefit provided under this subchapter provides an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limit is the lesser of:

(I) The limitation determined under the immediately preceding sentence; or

(II) The defined benefit dollar limit (adjusted for participation of less than 10 years, if applicable) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under this subchapter at the age of benefit commencement to the annual amount of the adjusted immediately commencing straight life annuity under this subchapter at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under this subchapter at the age the benefit commences is the annual amount of the annuity payable to the member, computed disregarding the member's accruals after age 65 but including any actuarial adjustments, even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under this subchapter at age 65 is the annual amount of such annuity that would be payable under this subchapter to a hypothetical member who is age 65 and has the same annuity as the member.

(iii) For the purposes of this subparagraph, no adjustment shall be made to the defined benefit dollar limit to reflect the probability of a member's death between the commencing date and age 62, or between age 65 and the commencing date, as applicable, if benefits are not forfeited upon the death of the member before the annuity having a commencing date. To the extent that benefits are forfeited upon death before the date the benefits first commence, an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the benefit provided under this subchapter does not charge the member for providing a qualified preretirement survivor annuity, as defined for purposes of section 415 of the Internal Revenue Code of 1986, upon the member's death.

(3) If the member has fewer than 10 years of participation in the defined benefit portion of this subchapter, as determined under section 415 of the Internal Revenue Code of 1986 and the regulations thereunder, the defined

benefit dollar limit shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of participation under this subchapter and the denominator of which is 10. The adjustment in this paragraph shall not apply to benefits paid on account of disability under § 5-709 or § 5-710 or as a result of the death of a member under § 5-716. In the case of years of credited service credited to a member pursuant to § 5-704:

(A) The limitations contained in paragraph (1)(A)(i) of this subsection and this paragraph shall not apply to the portion of the member's accrued retirement benefit (determined as of the annuity commencement date) that is attributable to any additional years of credited service under § 5-704 that are actuarially funded by:

(i) A transfer or rollover from the member's account under a retirement plan qualified under section 401(a) of the Internal Revenue Code of 1986 or an eligible deferred compensation plan within the meaning of section 457(b) of the Internal Revenue Code of 1986 or from an individual retirement account; or

(ii) A direct payment.

(B) The limitations contained in paragraph (1)(A)(i) of this subsection and this paragraph shall apply to the portion of the member's accrued retirement benefit (determined as of the annuity commencement date) that is attributable to any additional years of credited service under § 5-704 that are not actuarially funded by:

(i) A transfer or rollover from the member's account under a retirement plan qualified under section 401(a) of the Internal Revenue Code of 1986 or an eligible deferred compensation plan within the meaning of section 457(b) of the Internal Revenue Code of 1986 or from an individual retirement account; or

(ii) A direct payment.

(C) The determination of the extent to which additional years of credited service under § 5-704 have been actuarially funded as of the annuity commencement date shall be determined in accordance with section 411(c) of the Internal Revenue Code of 1986 (using the actuarial assumptions thereunder), applied as if section 411(c) of the Internal Revenue Code of 1986 applied and treating the amount transferred from a plan qualified under section 401(a) of the Internal Revenue Code of 1986, the member's account under an eligible deferred compensation plan within the meaning of section 457(b) of the Internal Revenue Code of 1986, or an individual retirement account, or the amount of the direct lump-sum payment to the Custodian of Retirement Funds, as if it were a mandatory employee contribution.

(4) In addition to the foregoing, the maximum benefit and contributions shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code of 1986, with respect to a member who is also a participant in:

(A) Another tax-qualified retirement plan maintained by the District, including a defined benefit plan in which an individual medical benefit account as described in section 415(l) of the Internal Revenue Code of 1986 has been established for the member;

(B) A welfare plan maintained by the District in which a separate account, as described in section 419A(d) of the Internal Revenue Code of 1986, has been established to provide post-retirement medical benefits for the member; or

(C) A retirement or welfare plan, as previously mentioned, maintained by an affiliated or predecessor employer, as described in regulations under section 415 of the Internal Revenue Code of 1986, or otherwise required to be taken into account under these regulations.

(5) If a member has distributions commencing at more than one date, determined in accordance with section 415 of the Internal Revenue Code of 1986 and associated regulations, the annuity payable having this commencement date shall satisfy the limitations of this subsection as of each date, actuarially adjusting for past and future distributions of benefits commencing at the other dates that benefits commence.

(6) The application of the provisions of this subsection shall not cause the maximum permissible benefit for a member to be less than the member's annuity under this subchapter as of the end of the last limitation year beginning before July 1, 2007 under provisions of this subchapter that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under section 415 of the Internal Revenue Code of 1986 as in effect as of the end of the last limitation year beginning before July 1, 2007.

(7) To the extent that a member's benefit is subject to provisions of section 415 of the Internal Revenue Code that have not been set forth in this subchapter, the provisions are hereby incorporated by reference and for all purposes shall be deemed a part of this subchapter.

(c) Notwithstanding any other provision to the contrary, all death benefit payments referred to in this section shall be distributed only in accordance with section 401(a)(9) of the Internal Revenue Code of 1986 and accompanying Treasury regulations, as more fully set forth in § 5-723.03.

(d) For the purposes of this section, the term:

(1) "Annual additions" means the sum of the following items credited to the member under this subchapter and any other tax-qualified retirement plan sponsored by the District for a limitation year and treated as a defined contribution plan for purposes of section 415 of the Internal Revenue Code of 1986: District contributions that are separately allocated to the member's credit in an defined contribution plan; forfeitures; member contributions; and amounts credited after March 31, 1984 to a member's individual medical account within the meaning of section 415(l) of the Internal Revenue Code of 1986.

(2) "Defined benefit dollar limit" means the dollar limit imposed by section 415(b)(1)(A) of the Internal Revenue Code of 1986, as adjusted pursuant to section 415(d) of the Internal Revenue Code of 1986. The defined benefit dollar limit as set forth above is the monthly amount payable in the form of a straight life annuity, beginning no earlier than age 62, except as provided in subsection (b)(2)(B)(i) of this section, and no later than age 65. In the case of a monthly amount payable in a form other than a straight life annuity, or beginning before age 62 or after age 65, the adjustments in subsection (b)(2) of this section shall apply.

(3) "Dollar limit" means the dollar limit on annual additions imposed by section 415(c)(1)(A) of the Internal Revenue Code of 1986, as adjusted pursuant to section 415(d) of the Internal Revenue Code of 1986.

(D) "Remuneration" means a member's wages as defined in section 3401(a) of the Internal Revenue Code of 1986 and other payments of salary to the member from the District, for which the District is required to furnish the member a written statement under sections 6041(d) and 6051(a)(3) of the Internal Revenue Code of 1986. For this purpose:

(A) Remuneration shall be determined without regard to rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(B) Remuneration shall include an amount that would otherwise be deemed remuneration under this definition but for the fact that it is subject to a salary reduction agreement under a plan described in sections 457(b), 132(f) or 125 of the Internal Revenue Code of 1986.

(C) Remuneration with respect to any limitation year shall in no event exceed the dollar limit specified in section 401(a)(17) of the Internal Revenue Code of 1986, as adjusted from time to time by the Secretary of the Treasury. The cost-of-living adjustment in effect for a calendar year applies to remuneration for the limitation year that begins with or within such calendar year.

(Sept. 16, 1916, 39 Stat. 718, ch. 433, § 12(n-1), as added Oct. 1, 2002, D.C. Law 14-190, § 3722(a), 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 40(b), 51 DCR 881; May 1, 2013, D.C. Law 19-314, § 2(f), 60 DCR 3466.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-314 rewrote the section.

Legislative history of Law 19-314. — See

note to § 5-701.

§ 5-723.03. Required minimum distributions.

(a) Distributions shall begin no later than the member's required beginning date, as defined in section 401(a)(9) of the Internal Revenue Code of 1986, and shall be made in accordance with all other requirements of section 401(a)(9) of the Internal Revenue Code of 1986. The provisions of this section shall apply for the purposes of determining minimum required distributions under section 401(a)(9) of the Internal Revenue Code of 1986 and take precedence over any inconsistent provisions of this subchapter; provided, that these provisions are intended solely to reflect the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 and accompanying Treasury regulations and are not intended to provide or expand, and shall not be construed as providing or expanding, a benefit or distribution option not otherwise expressly provided for under the terms of this subchapter. The provisions of this section shall apply only to the extent required under section 401(a)(9) of the Internal Revenue Code of 1986 as applied to a governmental plan, and if special rules for governmental plans are not set forth herein, the special rules are incorporated by reference and shall for all purposes be deemed a part of this subchapter.

(b)(1) The member's entire interest shall be distributed or begin being distributed to the member no later than April 1 following the later of:

(A) The calendar year in which the member attains age 70 $\frac{1}{2}$; or

(B) The calendar year in which the member retires or terminates employment (the "required beginning date").

(2) If the member dies before distributions begin, the member's entire interest shall be distributed, or will begin to be distributed, no later than as follows:

(A) If the member's surviving spouse is the sole designated beneficiary, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the member died, or by December 31 of the calendar year in which the member would have attained age 70 $\frac{1}{2}$, if later;

(B) If the member's surviving spouse is not the sole designated beneficiary, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the member died;

(C) If there is no designated beneficiary as of September 30 of the year following the year of the member's death, the member's entire interest shall be distributed by December 31 of the calendar year of the 5th anniversary of the member's death;

(D) If the member's surviving spouse is the sole designated beneficiary and the surviving spouse dies after the member but before distributions to the surviving spouse begin, subparagraph (A) of this paragraph shall not apply, and subparagraphs (B) and (C) of this paragraph shall apply as if the surviving spouse were the member. For the purposes of this paragraph and subsection (d) of this section, distributions are considered to begin on the member's required beginning date or, if this subparagraph applies, the date distributions to the surviving spouse are required to begin under subparagraph (A) of this paragraph. If annuity payments to the member irrevocably commence before the member's required beginning date or to the member's surviving spouse before the date distributions to the surviving spouse are required to begin under subparagraph (A) of this paragraph, the date distributions are considered to begin is the date distributions actually commence.

(3) Unless the member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions will be made in accordance with subsections (c) and (d) of this section. If the member's interest is distributed in the form of an annuity purchased from an insurance company, distributions of the annuity will be made in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 and applicable Treasury regulations. Any part of the member's interest that is in the form of an individual account described in section 414(k) of the Internal Revenue Code of 1986 shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 and the Treasury regulations that apply to individual accounts.

(c)(1) The amount of the annuity is to be determined each year.

(2) If the member's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(A) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year;

(B) Payments will either be non-increasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index based on prices of all items (the CPI-W) and issued by the Bureau of Labor Statistics;

(ii) To provide cash refunds of employee contributions upon the teacher's death;

(iii) To pay increased benefits that result from an amendment to this subchapter.

(3) The amount that must be distributed on or before the member's required beginning date or, if the member dies before distributions begin, the date distributions are required to begin under subsection (b)(2)(A) or (B) of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (for example, bi-monthly, monthly, semi-annually, or annually). All of the member's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the member's required beginning date.

(4) Additional benefits accruing to the member in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(d) Amounts payable if a member dies before distribution begins are subject to the following requirements:

(1) If the member dies before the date of distribution of his or her interest begins and there is a designated beneficiary, the member's entire interest shall be distributed, beginning no later than the time described in subsection (b)(2)(A) or (B) of this section, over the life of the designated beneficiary not exceeding either of the following:

(A) Unless the benefit commenced is before the first distribution calendar year, the life expectancy of the designated beneficiary, determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the teacher's death; or

(B) If the benefit commenced before the first distribution calendar year, the life expectancy of the designated beneficiary, determined using the beneficiary's age as of his or her birthday in the calendar year that begins before benefits commence; or

(2) If the member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the member's death, distribution of the member's entire interest shall be completed by December 31 of the calendar year of the fifth anniversary of the member's death; or

(3) If the member dies before the date distribution of his or her interest begins, the member's surviving spouse is the member's sole designated

beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection shall apply as if the surviving spouse were the member, except that the time by which distributions must begin shall be determined without regard to subsection (b)(2)(A) of this section.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(n-3), as added May 1, 2013, D.C. Law 19-314, § 2(g), 60 DCR 3466.)

Section references. — This section is referenced in § 5-723.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-314 added this section.

Legislative history of Law 19-314. — See note to § 5-701.

§ 5-723.04. Disposition of forfeitures.

Forfeitures in the District of Columbia Police Officers and Fire Fighters' Retirement Fund established by § 1-712 shall not be applied to increase the annuity of a person, but rather, shall be applied to pay administrative expenses, if and as directed by the District of Columbia Retirement Board, or used to reduce the District's contributions.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(n-4), as added May 1, 2013, D.C. Law 19-314, § 2(g), 60 DCR 3466.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-314 added this section.

Legislative history of Law 19-314. — See note to § 5-701.

§ 5-723.05. Funds not assignable or subject to execution.

Except as provided in § 1-529.01, none of the money mentioned in this subchapter, including any assets of the District of Columbia Police Officers and Fire Fighters' Retirement Fund, shall be assignable, either in law or equity, or be subject to execution of levy by attachment, garnishment, or other legal process except with respect to a domestic relations order that substantially meets all of the requirements of section 414(p) of the Internal Revenue Code of 1986, as determined solely by the District of Columbia Retirement Board.

(Sept. 1, 1916, 39 Stat. 718, ch. 433, § 12(n-5), as added May 1, 2013, D.C. Law 19-314, § 2(g), 60 DCR 3466.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-314 added this section.

Legislative history of Law 19-314. — See note to § 5-701.

CHAPTER 14. CHIEF MEDICAL EXAMINER.

Sec.

5-1419. Impaired driving program; chemical testing.

§ 5-1419. Impaired driving program; chemical testing.

(a) The CME shall be responsible for ensuring the accuracy of blood and urine testing for the District's impaired driving program. The CME may test or authorize the testing of specimens, as defined by § 50-1901(18), for the purposes of determining if specimens contain alcohol or a drug.

(b) Until October 1, 2012, and after October 1, 2012 if authorized under § 5-1501.07(d), the CME shall be responsible for testing and certifying the accuracy of any District instrument utilized by District law enforcement personnel to test the alcohol content of breath. A District breath-test instrument shall only be used by District law enforcement personnel if it has been certified by the CME to be accurate. Certification of the accuracy of each breath test instrument must occur at least once every 180 days.

(c) In addition to the requirements under subsection (a) of this section, the CME shall:

(1) Develop a program for District law enforcement personnel to become trained and certified as a breath test instrument operator;

(2) Develop policies and procedures for the operation and maintenance of all breath test instruments utilized by District law enforcement personnel; and

(3) Develop policies and procedures for the maintenance of records demonstrating that the breath test instruments utilized by District law enforcement personnel are in proper operating condition.

(Oct. 20, 2000, D.C. Law 13-172, § 2918b, as added Apr. 27, 2013, D.C. Law 19-266, § 202, 59 DCR 12957; Apr. 20, 2013, D.C. Law 19-260, § 2, 60 DCR 1292.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 substituted "180 days" for "3 months" in (b).

The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-260. — Law 19-260, the "Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-828. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 9, 2013, it was assigned Act No. 19-612 and transmitted to Congress for its review. D.C. Law 19-260 became effective on Apr. 20, 2013.

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving

and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Editor's notes. — Section 5 of D.C. Law 19-260 provided that the Act shall apply as of the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

CHAPTER 15. DEPARTMENT OF FORENSIC SCIENCES.

Sec.

5-1501.07. Impaired driving program; certification and testing of breath alcohol equipment.

Sec.

5-1501.08. Transfer of personnel, records, functions, and authority.

5-1501.11. Science Advisory Board.

§ 5-1501.07. Impaired driving program; certification and testing of breath alcohol equipment.

(a) The Department shall be responsible for testing and certifying the accuracy of any District instrument utilized by District law enforcement personnel to test the alcohol content of breath. A District breath test instrument shall only be used by District law enforcement personnel if it has been certified by the Department, or the Department's designee, to be accurate. Certification of the accuracy of each breath test instrument shall occur at least once every 180 days.

(b) In addition to the requirements under subsection (a) of this section, the Department shall:

(1) Develop a program for District law enforcement personnel to become trained and certified as a breath test instrument operator;

(2) Develop policies and procedures for the operation and maintenance of all breath test instruments utilized by District law enforcement personnel; and

(3) Develop policies and procedures for the maintenance of records demonstrating that the breath test instruments utilized by District law enforcement personnel are in proper operating condition.

(c) The Department shall issue regulations to meet the requirements of this section.

(d) The Director may delegate by memorandum of agreement some or all of the responsibilities of this section, as well as some or all of the responsibilities for providing forensic science services pertaining to breath testing as provided by § 5-1501.08(a)(1) to the Office of the Chief Medical Examiner.

(e) This section shall apply as of October 1, 2012.

(Aug. 17, 2011, D.C. Law 19-18, § 8, 58 DCR 5403; Apr. 20, 2013, D.C. Law 19-260, § 3, 60 DCR 1292; Apr. 27, 2013, D.C. Law 19-266, § 201, 59 DCR 12957.)

Section references. — This section is referenced in § 5-1419 and § 50-2206.52.

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 substituted "180 days" for "3 months" in (a).

The 2013 amendment by D.C. Law 19-266 rewrote this section; and added "Impaired driving program; certification and" to the section heading.

Legislative history of Law 19-260. — Law 19-260, the "Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-828. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 9, 2013, it was assigned Act No. 19-612 and transmitted to Congress for its review. D.C. Law 19-260 became effective on Apr. 20, 2013.

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Editor's notes. — Section 5 of D.C. Law 19-260 provided that the act shall apply as of the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

§ 5-1501.08. Transfer of personnel, records, functions, and authority.

(a) The Mayor shall provide for the orderly transfer to the Department all of the authority, responsibilities, duties, assets, and functions of MPD pertaining to forensic science services, including:

- (1) Forensic alcohol;
- (2) Computer forensics;
- (3) Analysis of controlled substances;
- (4) DNA/biological material analysis;
- (5) Fingerprint comparison;
- (6) Firearms and tool mark examination;
- (7) Forensic photography;
- (8) Analysis of questioned documents;
- (9) Trace evidence analysis;
- (10) Personnel and authority for vacant and filled positions;
- (11) Property;
- (12) Records; and

(13) All unexpended balances of appropriations, allocations, and other funds available or to be made available to the MPD for the purposes of forensic science services.

(a-1) The Mayor shall provide for the orderly transfer to the Department all of the authority, responsibilities, duties, assets, and functions of the Department of Health pertaining to public health laboratory services, including:

- (1) Disease prevention, control and surveillance testing;
- (2) Emergency preparedness testing;
- (3) Food surveillance and testing;
- (4) Reference and specialized testing;
- (5) Integrated data management;
- (6) Education, training and partnerships;
- (7) Special research; and

(8) The ability to seek grants pertaining to public health laboratory services from government agencies, including the Center for Disease Control.

(b) The transfers set forth in subsections (a) and (a-1) of this section shall occur no later than October 1, 2012.

(Aug. 17, 2011, D.C. Law 19-18, § 9, 58 DCR 5403; Apr. 27, 2013, D.C. Law 19-266, § 303, 59 DCR 12957.)

Section references. — This section is referenced in § 5-1501.07.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added (a-1); and substituted “transfers set forth in subsections (a) and (a-1)” for “transfer set forth in subsection (a)” in (b).

Legislative history of Law 19-266. — Law 19-266, the “Comprehensive Impaired Driving

and Alcohol Testing Program Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

§ 5-1501.11. Science Advisory Board.

(a) There is established a Science Advisory Board, which shall consist of 9 voting members to be appointed pursuant to § 1-523.01(f), as follows:

(1) Five scientists with experience in scientific research and methodology, who have published in peer-reviewed scientific journals, and who are not currently employed by the Department or by a law enforcement laboratory or agency, including:

(A) One statistician; and

(B) One with expertise in quality assurance; and

(2) Four forensic scientists not currently employed by the Department or by a law enforcement laboratory or agency that provides forensic science services to the District.

(b) The Director and Deputy Director shall be ex officio, non-voting members of the Board.

(c)(1) Except as provided in paragraph (2) of this subsection, each voting member shall be appointed for a 3-year term. Whenever a vacancy occurs in an unexpired term, the Mayor shall appoint a replacement to fill that unexpired term in the same manner as the original appointment.

(2) The initial term of each member shall be staggered so that 3 members are appointed for one year, 3 members are appointed for 2 years, and 3 members are appointed for 3 years. The members to serve the one-year term, 2-year term, and 3-year term shall be determined by the Mayor at the time of nomination.

(3) The initial terms shall begin on the date a majority of the voting members have been sworn in, which shall become the anniversary date for all subsequent appointments.

(d) The Board shall elect a chairperson from among its voting members.

(e) The presence of a majority of the voting members holding office shall constitute a quorum.

(f) The Board shall hold no fewer than 4 regular meetings per year. The chairperson of the Board shall fix the time and place of each meeting. Additional meetings may be called either by the chairperson or upon the written request of the Director or of any 3 members of the Board.

(g) Minutes shall be prepared for each meeting. A transcript or detailed summary shall meet this requirement.

(Aug. 17, 2011, D.C. Law 19-18, § 12, 58 DCR 5403; June 19, 2013, D.C. Law 19-320, § 507, 60 DCR 3390.)

Section references. — This section is referenced in § 1-523.01 and § 5-1501.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 inserted “and who are not currently employed by the Department or by a law enforcement laboratory or agency” in (a)(1).

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amend-

ments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

TITLE 6. HOUSING AND BUILDING RESTRICTIONS AND REGULATIONS.

Chapter

3. Housing Redevelopment.

14. Construction Codes.

14A. Green Building Requirements.

CHAPTER 3. HOUSING REDEVELOPMENT.

Subchapter III. Transfer to Agency of Certain Property near Maine Avenue

Sec.

6-321.01. Authorized.

Subchapter III. Transfer to Agency of Certain Property near Maine Avenue.

§ 6-321.01. Authorized.

Subject to the provisions of §§ 6-301.20, 6-311.01, and this subchapter, the Council of the District of Columbia is authorized on behalf of the United States to transfer by one or more quitclaim deeds to the District of Columbia Redevelopment Land Agency established by § 6-301.03 [repealed], all right, title, and interest of the United States in and to part or all of certain property in the said District, as follows: The property located within the bounds of the site the legal description of which is the Southwest Waterfront Project Site (dated October 8, 2009) under Exhibit A of the document titled "Intent to Clarify the Legal Description in Furtherance of Land Disposition Agreement", as filed with the Recorder of Deeds on October 27, 2009 as Instrument Number 2009116776.

(Sept. 8, 1960, 74 Stat. 871, Pub. L. 86-736, § 1; July 9, 2012, 126 Stat. 990, Pub. L. 112-143, § 1(a), (b).)

Section references. — This section is referenced in § 6-321.02, § 6-321.03, § 6-321.04, and § 6-321.06.

CHAPTER 14. CONSTRUCTION CODES.

§ 6-1403. Scope.

Editor's notes. — Section 3(a) of D.C. Law 19-289 would have substituted "interior signs, advertising devices" for "signs, advertising devices" in (a)(1).

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 3: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public

space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

§ 6-1403.01. Construction Codes database.

Section references. — This section is referenced in § 6-1410.

Editor's notes.

Section 3(b) of D.C. Law 19-289 would have repealed this section.

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Section 10 of D.C. Law 19-289 provided: "Applicability. Sections 3, 4, 5, 6, 7, and 8 shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2."

§ 6-1409. Amendments; supplements; editions.

Section references. — This section is referenced in § 6-1401 and § 6-1405.01.

Editor's notes.

Section 3(c) of D.C. Law 19-289 would have repealed (a-1) and (b).

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 3: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

§ 6-1410. Building Rehabilitation Code.

Section references. — This section is referenced in § 6-1451.01.

Editor's notes.

Section 3(d) of D.C. Law 19-289 would have repealed this section.

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 3: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

§ 6-1411. Establishment of the District of Columbia Building Rehabilitation Code Advisory Council.

Section references. — This section is referenced in § 6-1410.

Editor's notes.

Section 3(e) of D.C. Law 19-289 would have repealed this section.

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 3: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

CHAPTER 14A. GREEN BUILDING REQUIREMENTS.

Sec.

6-1451.03. Privately-owned buildings and projects.

§ 6-1451.03. Privately-owned buildings and projects.

(a) This section shall apply to all privately-owned buildings and projects with at least 50,000 square feet of gross floor area.

(b)(1) All new construction and substantial improvement of nonresidential projects, including projects involving real property acquired by a real property disposition by sale from the District or a District instrumentality to a private entity, and projects if less than 15% [of] the project's total project cost was financed by the District or a District instrumentality, shall:

(A) Beginning January 1, 2009, as part of any building permit application, submit to DCRA a green building checklist documenting the green building elements to be pursued in the respective building's permit; and

(B) Be verified by an entity described in § 6-1451.04 as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the certification level within 2 years of the receipt of a certificate of occupancy; provided, that a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.

(2) This subsection shall apply as of:

(A) January 1, 2010, for a project involving real property acquired by a real property disposition by sale, from the District or a District instrumentality to a private entity, that has submitted an application for the first building permit on or after January 1, 2010; and

(B) January 1, 2012, for a project that has submitted an application for the first building permit on or after January 1, 2012.

(3) The area of common space in a project shall be allocated to either residential or nonresidential square footage of a project based upon the percentage of gross floor area of the project occupied by each of the residential and nonresidential occupancies calculated after excluding the area of common space.

(4) An applicant for new construction or substantial improvement of a mixed-use space shall fulfill or exceed the current edition of the LEED standard for commercial and institutional buildings at the certified level for the nonresidential portion of the project. Any requirements set forth in § -1451.05 shall apply to the mixed-use space of the project. For the purposes of mixed-use space in this paragraph, the term:

(A) "LEED" also includes LEED for Commercial Interiors and LEED for Retail: Commercial Interiors; and

(B) "Certificate of occupancy" refers to the first certificate of occupancy issued for a usable, habitable space at grade or above grade for the mixed-use space of the project.

(c)(1) This subsection shall apply to all buildings and projects that are of a building type for which Energy Star® tools are available.

(2)(A) The requirements for existing privately-owned buildings shall be as follows:

(i) The owner or a designee of the owner shall annually benchmark the building using the Energy Star® Portfolio Manager benchmarking tool; and

(ii)(I) Benchmark and Energy Star® statements of energy performance for each building shall be made available to DDOE by April 1 of the respective following year. In 2011 only, the scores and statements shall be made available to DDOE no later than July 1.

(II) Upon receipt, DDOE shall make the benchmark and Energy Star® statements available to the public via an online database accessible through the DDOE website, beginning with the 2nd annual benchmarking data for each building.

(B) This paragraph shall apply as of:

(i) January 1, 2010, for a building with over 200,000 square feet of gross floor area;

(ii) January 1, 2011, for a building with over 150,000 square feet of gross floor area;

(iii) January 1, 2012, for a building with over 100,000 square feet of gross floor area; and

(iv) January 1, 2013, for a building with over 50,000 square feet of gross floor area, or more.

(C) Benchmarking data required in this paragraph shall include water consumption data as incorporated in the Portfolio Manager Benchmarking Tool.

(D) A building owner or tenant who fails to timely, accurately, and completely submit the benchmarking information required by this paragraph to DDOE or to the building owner shall be assessed a penalty by DDOE of no more than \$100 for each day during which the required submission has not been made. Civil infraction fines, penalties, and fees may be imposed as alternative sanctions for such failure, pursuant to Chapter 18 of Title 2. Adjudication of an infraction shall be pursuant to Chapter 18 of Title 2.

(3) An applicant for new construction or substantial improvement of a project who submits the first building permit after January 1, 2012, shall, prior to construction, estimate the project's energy performance using the Energy Star® Target Finder Tool.

(Mar. 8, 2007, D.C. Law 16-234, § 4, 54 DCR 377; Oct. 22, 2008, D.C. Law 17-250, § 501(b), 55 DCR 9225; July 27, 2010, D.C. Law 18-209, § 504(b), 57 DCR 4779; Mar. 31, 2011, D.C. Law 18-331, § 2, 58 DCR 22; Mar. 31, 2011, D.C. Law 18-349, § 2(c), 58 DCR 724; June 5, 2012, D.C. Law 19-139, § 2(c), 59 DCR 2555; Sept. 26, 2012, D.C. Law 19-171, § 45(b), 59 DCR 6190.)

Section references. — This section is referenced in § 6-1451.01, § 6-1451.04, § 6-1451.05, § 6-1451.10, and § 8-1774.10.

Effect of amendments.

D.C. Law 19-139, in subsec. (b)(1)(A), substi-

tuted "permit" for "construction permit"; in subsec. (b)(1)(B), inserted "; provided, that a public school shall be verified as having fulfilled or exceeded the current edition of the LEED standard for commercial and institutional

buildings at the gold level or higher if sufficient funding for the construction or renovation is provided.”; in subsecs. (b)(2)(A), (B), and (c)(3), substituted “first building permit” for “1st building construction permit”; added subsecs. (b)(3), (4), and (c)(2)(C), (D); and, in subsec. (c)(2)(A)(ii)(I), substituted “April 1 of the respective following year. In 2011 only, the scores

and statements shall be made available to DDOE no later than July 1.” for “January 1 of the respective following year.”

The 2012 amendment by D.C. Law 19-171 redesignated (b-1) as (c) in the version of the section as it existed before its revision by D.C. Law 18-349.

TITLE 7. HUMAN HEALTH CARE AND SAFETY.

SUBTITLE B-I. BLIND AND PHYSICALLY DISABLED PERSONS.

Chapter

10. Rights of Blind and Physically Disabled Persons.

SUBTITLE G-I. VACCINATIONS AND IMMUNIZATIONS.

16A. Human Papillomavirus Vaccination.

SUBTITLE J. PUBLIC SAFETY.

22. Homeland Security.

25. Firearms Control.

SUBTITLE B-I. BLIND AND PHYSICALLY DISABLED PERSONS.

CHAPTER 10. RIGHTS OF BLIND AND PHYSICALLY DISABLED PERSONS.

Sec.	Sec.
7-1001. Equal access to public places.	7-1003. [Repealed].
7-1002. Equal access to public accommodations and conveyances.	7-1006. Equal access to housing.
	7-1009. Definitions.

§ 7-1001. Equal access to public places.

Persons with physical or mental disabilities have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places in the District of Columbia.

(Oct. 21, 1972, 86 Stat. 970, Pub. L. 92-515, § 1; Apr. 24, 2007, D.C. Law 16-305, § 25(a), 53 DCR 6198; Apr. 27, 2013, D.C. Law 19-291, § 2(a), 60 DCR 2351.)

Section references. — This section is referenced in § 2-1831.03, § 7-1004, and § 7-1007.

Effect of amendments.

The 2013 amendment by D.C. Law 19-291 substituted “Persons with physical or mental

disabilities” for “The blind and other persons with physical disabilities”.

Legislative history of Law 19-291. — Law 19-291, the “Service Animals Access Amendment Act of 2011,” was introduced in Council and assigned Bill No. 19-161. The Bill was

adopted on first and second readings on Dec. 4, 2012, and Dec. 12, 2012, respectively. Signed by the Mayor on Jan. 13, 2013, it was assigned Act No. 19-659 and transmitted to Congress for its review. D.C. Law 19-291 became effective on Apr. 27, 2013.

§ 7-1002. Equal access to public accommodations and conveyances.

(a) Persons with physical and mental disabilities are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, streetcars, boats, or any other public conveyances or modes of transportation in the District of Columbia, hotels, lodging places, places of public accommodation, amusement, or resort, and other places to which the general public is invited in the District of Columbia, subject only to the conditions and limitations established by law or in accordance with law applicable alike to all persons.

(b) Persons with physical or mental disabilities shall have the right to be accompanied by a service animal in any of the places, accommodations, or conveyances listed in subsection (a) of this section without being denied access because of the service animal. Such persons shall not be required to pay an extra charge for the service animal but shall be liable for any damage done to the premises or facilities by the service animal.

(c) Every service animal trainer who is training an animal to be a service animal shall have the same access and liability conferred upon a person with physical or mental disabilities pursuant to subsection (b) of this section when accompanied by a service animal in training.

(d) In making a determination that an individual qualifies under this section, a public accommodation or conveyance may make a reasonable inquiry as to an individual’s need for a service animal but shall limit such inquiry to the following:

- (1) Whether the animal is required because of the individual’s disability;
- (2) The function or purpose of the animal, including the task or work the animal has been trained to perform;
- (3) Whether the animal meets the definition of a service animal provided in § 7-1009(5); and
- (4) Whether the animal is housebroken.

(Oct. 21, 1972, 86 Stat. 971, Pub. L. 92-515, § 2; Mar. 5, 1981, D.C. Law 3-144, § 2(a), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(b), 53 DCR 6198; May 22, 2010, D.C. Law 18-146, § 2(a), 57 DCR 2549; Apr. 27, 2013, D.C. Law 19-291, § 2(b), 60 DCR 2351.)

Section references. — This section is referenced in § 7-1004 and § 7-1007.

Effect of amendments.

The 2013 amendment by D.C. Law 19-291 substituted “Persons with physical or mental disabilities” for “The blind and other persons

with physical disabilities” in (a); rewrote (b); substituted “with physical or mental disabilities” for “who is blind or deaf” in (c); and added (d).

Legislative history of Law 19-291. — See note to § 7-1001.

**§ 7-1003. Architectural barrier-free design requirements.
[Repealed].**

Repealed.

(July 1, 1980, D.C. Law 3-76, § 7, 27 DCR 2409; Mar. 21, 1987, D.C. Law 6-216, § 12(a)(8), 34 DCR 1072.)

§ 7-1006. Equal access to housing.

(a) Persons with physical or mental disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in the District of Columbia, subject to the conditions and limitations established by law or in accordance with law and applicable alike to all persons.

(b) Persons with physical or mental disabilities who have a service animal shall be entitled to full and equal access to all housing accommodations referred to in this section without being denied access because of the service animal. Such persons shall not be required to pay an extra charge for the service animal but shall be liable for any damage done by the service animal.

(c) Nothing in this section shall require any person renting, leasing, or providing real property for compensation in the District of Columbia to modify his property in any way or to provide a higher degree of care for a blind person or person with another physical disability than for a person who does not have a physical disability.

(d) In making a determination that an individual qualifies under this section, a housing provider shall limit any inquiry to the minimum information and documentation necessary to establish that an individual meets the definition of persons with physical or mental disabilities provided in § 7-1009(4) by requiring that a physician or other licensed healthcare professional verify that the individual meets the definition of persons with physical or mental disabilities. A housing provider may also require a person with a disability to demonstrate a nexus between his or her disability and the function that the service animal provides. A housing provider shall not inquire further into the nature or severity of the disability. A housing provider shall not require the individual to provide a description of the disability when making an eligibility determination. A housing provider shall not require the individual to provide eligibility documentation in less than 30 days.

(Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 5; Mar. 5, 1981, D.C. Law 3-144, § 2(c), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(d), 53 DCR 6198; Apr. 27, 2013, D.C. Law 19-291, § 2(c), 60 DCR 2351.)

Section references. — This section is referenced in § 7-1007.

Effect of amendments.

The 2013 amendment by D.C. Law 19-291 substituted “Persons with physical or mental

disabilities” for “Blind persons and other persons with physical disabilities” in (a); rewrote (b); and added (d).

Legislative history of Law 19-291. — See note to § 7-1001.

§ 7-1009. Definitions.

For the purposes of this chapter:

(1) The term “blind person” means, and the term “blind” refers to, a person who is totally blind, has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200, or who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree.

(2) The term “deaf person” means a person who is totally deaf or a person with hearing impairment that severely interferes with his or her ability to hear environmental noises.

(3) The term “guide dog” means a dog that is specially trained to assist a blind or deaf person and one which a blind or deaf person relies on for assistance.

(4) The term “persons with physical or mental disabilities” refers to an individual who has a medically determinable physical or mental impairment that substantially limits the ability of one to assist one’s self, to perform manual tasks, to engage in an occupation, to live independently, to walk, to see, or to hear.

(5) The term “service animal” means an animal, permitted in the District under § 8-1808(h)(1), including a guide dog, that is specially trained to assist a person who meets the definition of persons with physical or mental disabilities, and is one which a person with physical or mental disabilities relies on for disability-related assistance. The term also includes an animal in training by an organization that provides service animals to persons with physical or mental disabilities. The term does not encompass an animal whose sole purpose is to serve as a crime deterrent or that serves solely as a companion.

(6) The term “service animal in training” means an animal that is:

(A) At least 6 months of age;

(B) Undergoing special training to assist persons with physical or mental disabilities;

(C) Accompanied by an experienced service animal trainer; and

(D) Designated as a service animal in training by wearing a harness, backpack, or vest that identifies it as a service animal in training.

(Oct. 21, 1972, 86 Stat. 972, Pub. L. 92-515, § 8; Mar. 5, 1981, D.C. Law 3-144, § 2(d), 27 DCR 4659; Apr. 24, 2007, D.C. Law 16-305, § 25(g), 53 DCR 6198; May 22, 2010, D.C. Law 18-146, § 2(c), 57 DCR 2549; Apr. 27, 2013, D.C. Law 19-291, § 2(d), 60 DCR 2351.)

Section references. — This section is referenced in § 7-1002, § 7-1006, and § 7-2502.03.

Effect of amendments.

The 2013 amendment by D.C. Law 19-291 rewrote (4) and (5); and substituted “persons

with physical or mental disabilities” for “a person who is blind or has a physical disability” in (6)(B).

Legislative history of Law 19-291. — See note to § 7-1001.

§ 7-1204.03. Court actions.

CASE NOTES

Child custody cases.

In a custody case where the father challenged the mother's mental health, by generally denying that her depression and anxiety compromised her fitness as a parent, the mother did

not make an implied waiver of her D.C. Code § 14-307 privilege protecting the confidentiality of her mental health treatment information. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

SUBTITLE G-I. VACCINATIONS AND IMMUNIZATIONS.

CHAPTER 16A. HUMAN PAPILLOMAVIRUS VACCINATION.

Sec.

7-1651.06. Applicability. [Repealed].

§ 7-1651.06. Applicability. [Repealed].

Repealed.

(July 12, 2007, D.C. Law 17-10, § 7, 54 DCR 5146; Aug. 16, 2008, D.C. Law 17-219, § 7089, 55 DCR 7598.)

Legislative history of Law 17-219. — Law 17-219, the “Fiscal Year 2009 Budget Support Act of 2008,” was introduced in Council and assigned Bill No. 17-733. The Bill was adopted on first and second readings on May 6, 2008,

and June 3, 2008, respectively. Signed by the Mayor on June 24, 2008, it was assigned Act No. 17-419 and transmitted to Congress for its review. D.C. Law 17-219 became effective on Aug. 16, 2008.

CHAPTER 17. RESTRICTIONS ON TOBACCO SMOKING.

Subchapter I. General.

§ 7-1703. Smoking restrictions.

Editor's notes.

Section 4 of D.C. Law 19-270 would have deleted “except that smoking with the prior consent of all occupants of the vehicle shall be permitted when the vehicle is a limousine” following “under § 47-2829” in (5).

Section 5 of D.C. Law 19-270 provided that

the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

SUBTITLE J. PUBLIC SAFETY.

CHAPTER 22. HOMELAND SECURITY.

Subchapter II. District of Columbia Homeland Security Commission

bia Homeland Security Commission; membership.

Sec.

7-2271.02. Establishment of District of Colum-

Subchapter II. District of Columbia Homeland Security Commission.

§ 7-2271.02. Establishment of District of Columbia Homeland Security Commission; membership.

(a) There is established a District of Columbia Homeland Security Commission, which shall consist of 7 persons with expertise in security, transportation, communication, chemical safety, risk assessment, terrorism (including bioterrorism), or occupational safety and health.

(b)(1) Commission members shall be nominated by the Mayor and confirmed by the Council for terms of 3 years, in accordance with § 1-523.01(e), except that initially 4 Commission members shall be appointed to a 3-year term and 3 Commission members shall be appointed to a 2-year term.

(2) The Mayor shall establish through rulemaking that Commission members shall be subject to pre-nomination inquiries and security-clearance requirements.

(3) The terms of the members first appointed shall begin on the date a majority of the first members are sworn in, which shall become the anniversary date for all subsequent appointments.

(4) Commission member's terms shall be staggered so that either 4 positions or 3 positions will expire on the year's anniversary date.

(c) Members shall receive no salary for their service on the Commission but shall be reimbursed for administrative costs associated with membership.

(d) The Agency shall provide staff to the Commission.

(Mar. 14, 2007, D.C. Law 16-262, § 202, 54 DCR 794; June 19, 2013, D.C. Law 19-320, § 508, 60 DCR 3390.)

Section references. — This section is referenced in § 1-523.01 and § 7-2271.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added “except that initially 4 Commission members shall be appointed to a 3-year term and 3 Commission members shall be appointed to a 2-year term” at the end of (b)(1); and made a related change.

Legislative history of Law 19-320. — Law

19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CHAPTER 25. FIREARMS CONTROL.

UNIT A. FIREARMS CONTROL REGULATIONS

Subchapter VI. Possession of Ammunition

Subchapter I. Definitions

Sec.

Sec.

7-2501.01. Definitions.

7-2506.01. Persons permitted to possess ammunition.

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition

Subchapter VII. Miscellaneous Provisions

7-2505.02. Permissible sales and transfers.

7-2507.06. Penalties.

Unit A. Firearms Control Regulations.

Subchapter I. Definitions.

§ 7-2501.01. Definitions.

As used in this unit the term:

(1) "Acts of Congress" means:

(A) Chapter 45 of Title 22;

(B) Omnibus Crime Control and Safe Streets Act of 1968, as amended (title VII, Unlawful Possession or Receipt of Firearms (82 Stat. 1236; 18 U.S.C. Appendix)); and

(C) An Act to Amend Title 18, United States Code, To Provide for Better Control of the Interstate Traffic in Firearms Act of 1968 (82 Stat. 1213; 18 U.S.C. § 921 et seq.).

(2) "Ammunition" means cartridge cases, shells, projectiles (including shot), primers, bullets (including restricted pistol bullets), propellant powder, or other devices or materials designed, redesigned, or intended for use in a firearm or destructive device.

(3) "Antique firearm" means:

(A) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(B) Any replica of any firearm described in subparagraph (A) if such replica:

(i) Is not designed or redesigned for using rim-fire or conventional center-fire fixed ammunition; or

(ii) Uses rim-fire or conventional ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

(3A)(A) "Assault weapon" means:

(i) The following semiautomatic firearms:

(I) All of the following specified rifles:

(aa) All AK series including, but not limited to, the models identified as follows:

(1) Made in China AK, AKM, AKS, AK47, AK47S, 56, 56S, 84S, and 86S;

- (2) Norinco (all models);
- (3) Poly Technologies (all models);
- (4) MAADI AK47 and ARM; and
- (5) Mitchell (all models).
- (bb) UZI and Galil;
- (cc) Beretta AR-70;
- (dd) CETME Sporter;
- (ee) Colt AR-15 series;
- (ff) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR110 C;
- (gg) Fabrique Nationale FAL, LAR, FNC, 308 Match, and

Sporter;

- (hh) MAS 223.
- (ii) HK-91, HK-93, HK-94, and HK-PSG-1;
- (jj) The following MAC types:
 - (1) RPB Industries Inc. sM10 and sM11; and
 - (2) SWD Incorporated M11;
- (kk) SKS with detachable magazine;
- (ll) SIG AMT, PE-57, SG 550, and SG 551;
- (mm) Springfield Armory BM59 and SAR-48;
- (nn) Sterling MK-6;
- (oo) Steyer AUG, Steyr AUG;
- (pp) Valmet M62S, M71S, and M78S;
- (qq) Armalite AR-180;
- (rr) Bushmaster Assault Rifle;
- (ss) Calico —900;
- (tt) J&R ENG —68; and
- (uu) Weaver Arms Nighthawk.
- (II) All of the following specified pistols:
 - (aa) UZI;
 - (bb) Encom MP-9 and MP-45;
 - (cc) The following MAC types:
 - (1) RPB Industries Inc. sM10 and sM11;
 - (2) SWD Incorporated -11;
 - (3) Advance Armament Inc. —11; and
 - (4) Military Armament Corp. Ingram M-11;
 - (dd) Intratec TEC-9 and TEC-DC9;
 - (ee) Sites Spectre;
 - (ff) Sterling MK-7;
 - (gg) Calico M-950; and
 - (hh) Bushmaster Pistol.
- (III) All of the following specified shotguns:
 - (aa) Franchi SPAS 12 and LAW 12; and
 - (bb) Striker 12. The Streetsweeper type S/S Inc. SS₁₂;

(IV) A semiautomatic, rifle that has the capacity to accept a detachable magazine and any one of the following:

- (aa) A pistol grip that protrudes conspicuously beneath the action of the weapon;

- (bb) A thumbhole stock;
- (cc) A folding or telescoping stock;
- (dd) A grenade launcher or flare launcher;
- (ee) A flash suppressor; or
- (ff) A forward pistol grip;

(V) A semiautomatic pistol that has the capacity to accept a detachable magazine and any one of the following:

- (aa) A threaded barrel, capable of accepting a flash suppressor, forward handgrip, or silencer;
- (bb) A second handgrip;
- (cc) A shroud that is attached to, or partially or completely encircles, the barrel that allows the bearer to fire the weapon without burning his or her hand, except a slide that encloses the barrel; or
- (dd) The capacity to accept a detachable magazine at some location outside of the pistol grip;

(VI) A semiautomatic shotgun that has one or more of the following:

- (aa) A folding or telescoping stock;
- (bb) A pistol grip that protrudes conspicuously beneath the action of the weapon;
- (cc) A thumbhole stock; or
- (dd) A vertical handgrip; and

(VII) A semiautomatic shotgun that has the ability to accept a detachable magazine; and

(VIII) All other models within a series that are variations, with minor differences, of those models listed in subparagraph (A) of this paragraph, regardless of the manufacturer;

(ii) Any shotgun with a revolving cylinder; provided, that this subparagraph shall not apply to a weapon with an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition; and

(iii) Any firearm that the Chief may designate as an assault weapon by rule, based on a determination that the firearm would reasonably pose the same or similar danger to the health, safety, and security of the residents of the District as those weapons enumerated in this paragraph.

(B) The term "assault weapon" shall not include:

- (i) Any antique firearm; or
- (ii) Any of the following pistols, which are designed expressly for use in Olympic target shooting events, sanctioned by the International Olympic Committee and by USA Shooting, the national governing body for international shooting competition in the United States, and used for Olympic target shooting purposes:

MANUFACTURER	MODEL	CALIBER
BENELLI	MP90	.22LR
BENELLI	MP90	.32 S&W LONG
BENELLI	MP95	.22LR

MANUFACTURER	MODEL	CALIBER
BENELLI	MP95	.32 S&W LONG
HAMMERLI	280	.22LR
HAMMERLI	280	.32 S&W LONG
HAMMERLI	SP20	.22LR
HAMMERLI	SP20	.32 S&W LONG
PARDINI	GPO	.22 SHORT
PARDINI	GP-SCHUMANN	.22 SHORT
PARDINI	HP	.32 S&W LONG
PARDINI	MP	.32 S&W LONG
PARDINI	SP	.22LR
PARDINI	SPE	.22LR
WALTHER	GSP	.22LR
WALTHER	GSP	.32 S&W LONG
WALTHER	OSP	.22 SHORT
WALTHER	OSP-2000	.22 SHORT

(C) The Chief may exempt, by rule, new models of competitive pistols that would otherwise fall within the definition of "assault weapon" pursuant to this section from being classified as an assault weapon. The exemption of competitive pistols shall be based either on recommendations by USA Shooting consistent with the regulations contained in the USA Shooting Official Rules or on the recommendation or rules of any other organization that the Chief considers relevant.

(4) "Chief" means the Chief of Police of the Metropolitan Police Department of the District of Columbia or his designated agent.

(5) "Crime of violence" shall have the same meaning as provided in D.C. Official Code § 23-1331(4).

(6) "Dealer's license" means a license to buy or sell, repair, trade, or otherwise deal in firearms, destructive devices, or ammunition as provided for in subchapter IV of this unit.

(7) "Destructive device" means:

(A) An explosive, incendiary, or poison gas bomb, grenade, rocket, missile, mine, or similar device;

(B) Any device by whatever name known which will, or is designed or redesigned, or may be readily converted or restored to expel a projectile by the action of an explosive or other propellant through a smooth bore barrel, except a shotgun;

(C) Any device containing tear gas or a chemically similar lacrimator or sternutator by whatever name known;

(D) Any device designed or redesigned, made or remade, or readily converted or restored, and intended to stun or disable a person by means of electric shock;

(E) Any combination of parts designed or intended for use in converting any device into any destructive device; or from which a destructive device may be readily assembled; provided, that the term shall not include:

(i) Any pneumatic, spring, or B-B gun which expels a single projectile not exceeding .18 inch in diameter;

(ii) Any device which is neither designed nor redesigned for use as a weapon;

(iii) Any device originally a weapon which has been redesigned for use as a signaling, line throwing, or safety device; or

(iv) Any device which the Chief finds is not likely to be used as a weapon.

(8) "District" means District of Columbia.

(8A) ".50 BMG rifle" means:

(A) A rifle capable of firing a center-fire cartridge in .50 BMG caliber, including a 12.7 mm equivalent of .50 BMG and any other metric equivalent; or

(B) A copy or duplicate of any rifle described in subparagraph (A) of this paragraph, or any other rifle developed and manufactured after January 6, 2009, regardless of caliber, if such rifle is capable of firing a projectile that attains a muzzle energy of 12,000 foot-pounds or greater in any combination of bullet, propellant, case, or primer.

(9) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer; provided, that such term shall not include:

(A) Antique firearms; or

(B) Destructive devices;

(C) Any device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(D) Any device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(9A) "Firearms instructor" means an individual who is certified by the Chief to be qualified to teach firearms training and safety courses.

(9B) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(10) "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(11) "Organization" means any partnership, company, corporation, or other business entity, or any group or association of 2 or more persons united for a common purpose.

(12) "Pistol" means any firearm originally designed to be fired by use of a single hand or with a barrel less than 12 inches in length.

(12A) "Place of business" means a business that is located in an immovable structure at a fixed location and that is operated and owned entirely, or in substantial part, by the firearm registrant.

(13) "Registration certificate" means a certificate validly issued pursuant to this unit evincing the registration of a firearm pursuant to this unit.

(13A)(A) "Restricted pistol bullet" means:

(i) A projectile or projectile core which may be used in a pistol and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium;

(ii) A full jacketed projectile larger than .22 caliber designed and intended for use in a pistol and whose jacket has a weight of more than 25% of the total weight of the projectile; or

(iii) Ammunition for a .50 BMG rifle.

(B) The term "restricted pistol bullet" does not include:

(i) Shotgun shot required by federal or state environmental or game regulations for hunting purposes;

(ii) A frangible projectile designed for target shooting;

(iii) A projectile which the Attorney General of the United States finds is primarily intended to be used for sporting purposes; or

(iv) Any other projectile or projectile core which the Attorney General of the United States finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(14) "Rifle" means a grooved bore firearm using a fixed metallic cartridge with a single projectile and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(15) "Sawed-off shotgun" means a shotgun having a barrel of less than 18 inches in length; or a firearm made from a shotgun if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 18 inches in length.

(16) "Shotgun" means a smooth bore firearm using a fixed shotgun shell with either a number of ball shot or a single projectile, and designed or redesigned, made or remade, and intended to be fired from the shoulder.

(17) "Short barreled rifle" means a rifle having any barrel less than 16 inches in length, or a firearm made from a rifle if such firearm as modified has an overall length of less than 26 inches or any barrel of less than 16 inches.

(18) "Weapons offense" means any violation in any jurisdiction of any law which involves the sale, purchase, transfer in any manner, receipt, acquisition, possession, having under control, use, repair, manufacture, carrying, or transportation of any firearm, ammunition, or destructive device.

(Sept. 24, 1976, D.C. Law 1-85, title I, § 101, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 2, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(a), 56 DCR 1365; Sept. 29, 2012, D.C. Law 19-170, § 2(a), 59 DCR 5691; Apr. 27, 2013, D.C. Law 19-295, § 2(a), 60 DCR 2623.)

Section references. — This section is referenced in § 7-2502.13, § 7-2507.06a, § 7-2531.01, § 7-2551.01, § 16-2301, § 16-2333, § 22-4501, and § 42-3101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-295 rewrote (13A).

Legislative history of Law 19-295. — Law

19-295, the “Administrative Disposition for Weapons Offenses Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-888. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18,

2012, respectively. Signed by the Mayor on Feb. 4, 2013, it was assigned Act No. 19-663 and transmitted to Congress for its review. D.C. Law 19-295 became effective on Apr. 27, 2013.

Subchapter II. Firearms and Destructive Devices.

§ 7-2502.01. Registration requirements.

Section references. — This section is referenced in § 7-2504.01, § 7-2507.06, and § 7-2508.01.

CASE NOTES

ANALYSIS

Constructive possession.
Defenses.
Possession.

Constructive possession.

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. *Smith v. United States*, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

Defendant was not entitled to the exemption under D.C. Code § 7-2502.01(b)(1) because he was not a law enforcement officer or agent (1) under the ordinary understanding of those terms, (2) under the narrow exemption recognized for professionals accorded limited law enforcement authority, or (3) even in the jurisdiction in which he worked. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

Defenses.

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammunition in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

Possession.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland, because (1) the exception was read in pari materia with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registration expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. *Hargrove v. United States*, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

§ 7-2502.02. Registration of certain firearms prohibited.

Section references. — This section is referenced in § 7-2502.09, § 7-2504.01, § 7-2505.02, and § 7-2507.06a.

CASE NOTES

Construction with other law.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code

§ 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland,

because (1) the exception was read in pari materia with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registra-

tion expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. *Hargrove v. United States*, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

§ 7-2502.07. Issuance of registration certificate; time period; corrections.

CASE NOTES

Construction with other law.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland, because (1) the exception was read in pari materia with the registration provisions of D.C.

Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registration expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. *Hargrove v. United States*, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

Subchapter V. Sale and Transfer of Firearms, Destructive Devices, and Ammunition.

§ 7-2505.02. Permissible sales and transfers.

(a) Any person or organization eligible to register a firearm may sell or otherwise transfer ammunition or any firearm, except those which are unregistrable under § 7-2502.02, to a licensed dealer.

(b) Any licensed dealer may sell or otherwise transfer:

(1) Ammunition, excluding one or more restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory, to any nonresident person or business licensed under the acts of Congress and the jurisdiction where such person resides or conducts such business;

(2) Ammunition, including one or more restricted pistol bullets, and any firearm or destructive device which is lawfully a part of such licensee's inventory to:

(A) Any other licensed dealer;

(B) Any law enforcement officer or agent of the District or the United States of America when such officer or agent is on duty, and acting within the scope of his duties when acquiring such firearm, ammunition, or destructive device, if the officer or agent has in his possession a statement from the head of his agency stating that the item is to be used in such officer's or agent's official duties.

(c) Any licensed dealer may sell or otherwise transfer a firearm except those which are unregistrable under § 7-2502.02, to any person or organization possessing a registration certificate for such firearm; provided, that if the Chief denies a registration certificate, he shall so advise the licensee who shall thereupon: (1) withhold delivery until such time as a registration certificate is issued, or, at the option of the purchaser; (2) declare the contract null and void, in which case consideration paid to the licensee shall be returned to the

purchaser; provided further, that this subsection shall not apply to persons covered by subsection (b) of this section.

(d) Except as provided in subsections (b) and (e) of this section, no licensed dealer shall sell or otherwise transfer ammunition unless:

(1) The sale or transfer is made in person; and

(2) The purchaser exhibits, at the time of sale or other transfer, a valid registration certificate, or in the case of a nonresident, proof that the weapon is lawfully possessed in the jurisdiction where such person resides;

(3) The ammunition to be sold or transferred is of the same caliber or gauge as the firearm described in the registration certificate, or other proof in the case of nonresident; and

(4) The purchaser signs a receipt for the ammunition which (in addition to the other records required under this unit) shall be maintained by the licensed dealer for a period of 1 year from the date of sale.

(e) Any licensed dealer may sell ammunition to any person holding an ammunition collector's certificate on September 24, 1976; provided, that the collector's certificate shall be exhibited to the licensed dealer whenever the collector purchases ammunition for his collection; provided further, that the collector shall sign a receipt for the ammunition, which shall be treated in the same manner as that required under paragraph (4) of subsection (d) of this section.

(Sept. 24, 1976, D.C. Law 1-85, title V, § 502, 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 3, 30 DCR 3328; Apr. 27, 2013, D.C. Law 19-295, § 2(b), 60 DCR 2623.)

Section references. — This section is referenced in § 7-2505.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-295 substituted

"one or more restricted pistol bullets" for "restricted pistol bullets" in (b)(1) and (b)(2).

Legislative history of Law 19-295. — See note to § 7-2501.01.

Subchapter VI. Possession of Ammunition.

§ 7-2506.01. Persons permitted to possess ammunition.

(a) No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV of this unit;

(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;

(3) He is the holder of a valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets;

(4) He holds an ammunition collector's certificate on September 24, 1976; or

(5) He temporarily possesses ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is

attached to a firearm. For the purposes of this subsection, the term “large capacity ammunition feeding device” means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term “large capacity ammunition feeding device” shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(Sept. 24, 1976, D.C. Law 1-85, title VI, § 601; 23 DCR 2464; Mar. 16, 1978, D.C. Law 2-62, § 2, 24 DCR 5780; Aug. 2, 1983, D.C. Law 5-19, § 4, 30 DCR 3328; Mar. 31, 2009, D.C. Law 17-372, § 3(n), 56 DCR 1365; Sept. 29, 2012, D.C. Law 19-170, § 2(n), 59 DCR 5691; Apr. 27, 2013, D.C. Law 19-295, § 2(c), 60 DCR 2623.)

Section references. — This section is referenced in § 7-2507.06 and § 7-2508.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-295 substituted “possess one or more restricted pis-

tol bullets” for “possess restricted pistol bullets” in (a)(3).

Legislative history of Law 19-295. — See note to § 7-2501.01.

CASE NOTES

ANALYSIS

Constructive possession.
Defenses.

Constructive possession.

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. *Smith v. United States*, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

Because defendant's orders of appointment as a special conservator of the peace estab-

lished that he was not on duty or acting within the scope of his duties at the time of his arrest, he plainly did not qualify for the exemption contained in D.C. Code § 7-2506.01. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

Defenses.

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammunition in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

Subchapter VII. Miscellaneous Provisions.

§ 7-2507.06. Penalties.

(a) Except as provided in §§ 7-2502.05, 7-2502.08, 7-2507.02, and 7-2508.07, any person convicted of a violation of any provision of this unit shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both; except that:

(1) A person who knowingly or intentionally sells, transfers, or distributes a firearm, destructive device, or ammunition to a person under 18 years of age

shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(2)(A) Except as provided in subparagraph (B) of this paragraph, any person who is convicted a second time for possessing an unregistered firearm shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

(B) A person who in the person's dwelling place, place of business, or on other land possessed by the person, possesses a pistol, or firearm that could otherwise be registered, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 1 year, or both.

(3)(A) A person convicted of possessing more than one restricted pistol bullet in violation of § 7-2506.01(a)(3) may be sentenced to imprisonment for a term not to exceed 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 1 year and shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence, and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

(B) A person convicted of possessing a single restricted pistol bullet in violation of § 7-2506.01(a)(3) shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(b)(1) For the following violations of this unit, the prosecution may, in the operation of its discretion, offer an administrative disposition whereby a person may immediately resolve his or her case upon payment of a fine, in an amount set by the Board of Judges of the Superior Court of the District of Columbia; provided, that the person is not concurrently charged with another criminal offense arising from the same event, other than an offense pursuant to § 7-2502.01 or § 7-2506.01:

(A) Possession of an unregistered firearm pursuant to § 7-2502.01;

(B) Unlawful possession of ammunition (but not possession of more than one restricted pistol bullet) pursuant to § 7-2506.01; and

(C) Possession of a single restricted pistol bullet pursuant to § 7-2507.06(a)(3)(B); provided, that the person did not also possess a firearm at the time of arrest.

(2) In determining whether to offer an administrative disposition pursuant to this subsection, the prosecution, in the operation of its discretion, may consider, among other factors, whether at the time of his or her arrest, the person was a resident of the District of Columbia and whether the person had knowledge of § 7-2502.01, § 7-2506.01, or § 7-2507.06(a)(3)(B).

(3) An administrative disposition pursuant to this subsection is not a conviction of a crime and shall not be equated to a criminal conviction. The fact that a person resolved a charge through an administrative disposition pursuant to this subsection may not be relied upon by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action to impose any sanction, penalty, enhanced sentence, or civil disability.

(4) At the time of the prosecution's offer of an administrative disposition, the person may elect to proceed with the criminal case in lieu of an administrative disposition.

(5) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this subsection. The rules may provide procedures and criteria to be used in determining when the prosecution, in the operation of its discretion, may offer the option of an administrative disposition pursuant to this subsection.

(Sept. 24, 1976, D.C. Law 1-85, title VII, § 706, 23 DCR 2464; Mar. 5, 1981, D.C. Law 3-147, § 2, 27 DCR 4882; Aug. 20, 1994, D.C. Law 10-151, § 301, 41 DCR 2608; Apr. 24, 2007, D.C. Law 16-306, § 205, 53 DCR 8610; Sept. 29, 2012, D.C. Law 19-170, § 2(p), 59 DCR 5691; Apr. 27, 2013, D.C. Law 19-295, § 2(d), 60 DCR 2623.)

Section references. — This section is referenced in § 7-2502.03, § 7-2502.08, § 7-2503.01, § 7-2507.02, and § 7-2507.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-295 designated the existing provisions as (a); substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in the introductory language of (a) and in (a)(2)(B);

substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (a)(1); substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (a)(2)(A); rewrote (a)(3); and added (b).

Legislative history of Law 19-295. — See note to § 7-2501.01.

TITLE 8. ENVIRONMENTAL AND ANIMAL CONTROL AND PROTECTION.

SUBTITLE A. ENVIRONMENTAL CONTROL AND PROTECTION.

Chapter

1. Environmental Controls.
4. Pesticides.

SUBTITLE B. WASTE DISPOSAL AND MANAGEMENT.

8. Litter Control Administration.
10. Solid Waste Management and Multi-Material Recycling.

SUBTITLE A. ENVIRONMENTAL CONTROL AND PROTECTION.

CHAPTER 1. ENVIRONMENTAL CONTROLS.

<i>Subchapter II-A. Bloomingdale and LeDroit Park Backwater Valves</i>		Sec.	
Sec.			ble when funded; effective until September 14, 2014].
8-105.51. Definitions.	[Applicable when funded; effective until September 14, 2014].	8-105.53. Appeals.	[Applicable when funded; effective until September 14, 2014].
8-105.52. Backwater valve program.	[Applica-	8-105.54. Stormwater and sewage cleanup	

Sec.

plan. [Applicable when funded; effective until September 14, 2014].

8-105.55. Sandbag analysis and distribution. [Applicable when funded; effective until September 14, 2014].

8-105.56. Analysis of Rhode Island Avenue. [Applicable when funded; effective until September 14, 2014].

8-105.57. Applicability. [Applicable when funded; effective until September 14, 2014].

8-105.58. Sunset. [Applicable when funded; effective until September 14, 2014].

Subchapter III-B. District of Columbia Flood Assistance Fund

8-105.71. Definitions.

8-105.72. Flood Assistance Fund Program.

Sec.

8-105.73. District of Columbia Flood Assistance Fund.

8-105.74. Applicability.

8-105.75. Sunset.

Subchapter IV-A. Restrictions on Bisphenol-A, Polybrominated Diphenyl Ethers, and Perchloroethylene

8-108.02. Prohibitions on polybrominated diphenyl ethers.

Subchapter II-A. Bloomingdale and LeDroit Park Backwater Valves.

§ 8-105.51. Definitions. [Applicable when funded; effective until September 14, 2014].

[Not funded].

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.52. Backwater valve program. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 3, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.53. Appeals. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 4, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon

the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the

Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.54. Stormwater and sewage cleanup plan. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 5, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.55. Sandbag analysis and distribution. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 6, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.56. Analysis of Rhode Island Avenue. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 7, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.57. Applicability. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 8, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon

the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the

Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

§ 8-105.58. Sunset. [Applicable when funded; effective until September 14, 2014].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-292, § 9, 60 DCR 2354.)

Editor's notes. — Section 8 of D.C. Law 19-292 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

Section 9 of D.C. Law 19-292 provided that the act shall expire on September 30, 2014.

Subchapter III-B. District of Columbia Flood Assistance Fund.

§ 8-105.71. Definitions.

For the purposes of this subchapter, the term:

(1) "Authority" means the District of Columbia Water and Sewer Authority established pursuant to § 34-2202.02(a).

(2) "Backwater valve" means a device installed in a building drain or branch of a building drain that prevents the backflow of water and sewage into the building's drainage system.

(3) "District of Columbia Flood Assistance Fund" or "Fund" means the District of Columbia Flood Assistance Fund established in § 8-105.73.

(4) "Personal property" means movable property not affixed to land, including goods, wares, merchandise, and household items and furnishings.

(5) "Program" means the Flood Assistance Fund Program established in § 8-105.72.

(6) "Property owner" means the owner of residential property or nonresidential property located within the District of Columbia or the owner of personal property, as defined in this section, housed within the District of Columbia.

(7) "Sewer" shall have the same meaning as provided in § 34-2202.01(9).

(8) "Sewer-line backup" means a wastewater backup into a building, which is caused by blockages, flow conditions, or malfunctions within the sewer system. The term "sewer-line backup" does not include wastewater backups resulting from flow conditions caused by overland flooding or blockages, flow conditions, or malfunctions of a private sewer lateral or internal building plumbing.

(Apr. 27, 2013, D.C. Law 19-293, § 2, 60 DCR 2613.)

Legislative history of Law 19-293. — Law 19-293, the "District Of Columbia Flood Assistance Fund Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-

938. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Returned without signature from the Mayor on Feb. 4, 2013, it was assigned Act

No. 19-661 and transmitted to Congress for its review. D.C. Law 19-293 became effective on Apr. 27, 2013.

§ 8-105.72. Flood Assistance Fund Program.

(a) Within 45 days of April 27, 2013, the Mayor shall establish a Flood Assistance Fund Program to reimburse District property owners for damage to personal property and residential property caused directly and exclusively by sewer-line backups that occurred during the time period established in subsection (b)(2)(C) of this section. The Program shall manage the District of Columbia Flood Assistance Fund established in § 8-105.73. The Mayor shall designate a Flood Assistance Fund Manager to oversee the Program.

(b)(1) The Flood Assistance Fund Manager shall:

(A) Coordinate with the Authority to determine eligibility requirements for property owners seeking reimbursement through the Flood Assistance Fund;

(B) Contract with a third party outside the District government to examine and evaluate the property damage for which a District property owner is seeking reimbursement;

(C) Establish the qualifications of the third party to evaluate property damage caused by sewer-line backup;

(D) Establish the criteria the third party shall use to evaluate the damage of a property;

(E) Inform District property owners and renters of the establishment of the Fund within 45 days of April 27, 2013;

(F) Create a process to receive and administer claims submitted by District property owners seeking reimbursement through the Fund;

(G) Establish additional Program requirements as needed; provided, that a property owner's mitigation of the property owner's damage is considered as a requirement; and

(H) Coordinate with the Authority to establish a flood assistance fund fee; provided, that the fee shall not exceed \$0.30 per Equivalent Residential Unit per month.

(2) In determining whether a residential property owner shall be eligible for reimbursement through the Program, the Flood Assistance Fund Manager shall require the property owner to establish:

(A) That the property owner owns or rents residential property in the District of Columbia;

(B) That all damage to the residential property described in subparagraph (A) of this paragraph or to personal property housed within the residential property described in subparagraph (A) of this paragraph, for which the property owner is seeking reimbursement, was caused directly and exclusively by a sewer-line backup;

(C) That the sewer-line backup occurred:

(i) After April 27, 2013; or

(ii) Between June 1, 2012 and April 27, 2013; provided, that the property owner submitted a claim to the Authority seeking reimbursement for

property damage related to a sewer-line backup and the claim has not been resolved by the Authority, or the property owner has documentation of property damage related to a sewer-line backup that occurred during this time period, which the Program considers sufficient to evaluate for the purposes of eligibility for reimbursement; and

(D) That the property owner contacted the Program, in a manner prescribed by the Flood Assistance Fund Manager, or notified the Authority about a sewer-line backup within 48 hours of becoming aware of the damage to the property described in subparagraphs (A) and (B) of this paragraph.

(3) A property owner submitting a claim pursuant to paragraph (2)(C)(ii) of this subsection shall submit the claim no later than 6 months after April 27, 2013.

(4) In determining whether a property owner shall be eligible for reimbursement through the Program, the Flood Assistance Fund Manager shall consider the evaluation of the third party established in paragraph (1)(B) of this subsection.

(5) The Flood Assistance Fund Manager shall establish eligibility requirements, which shall be submitted to the Council for a 45-day period review excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove by resolution the requirements within the 45-day period of review, the requirements shall be deemed approved.

(6) In executing the process to receive and administer claims submitted by District property owners, the Flood Assistance Fund Manager shall:

(A) Make an eligibility determination within 30 days of receipt of a claim for reimbursement;

(B) Notify a property owner, in writing, of the owner's eligibility for reimbursement through the Fund within 7 days of the determination;

(C) Manage the payment of individual claims reimbursed pursuant to this section; and

(D) Remit payment to a property owner within 45 days of issuing a determination that the property owner's claim has been deemed eligible for reimbursement.

(c) The Program shall submit a quarterly report to the Mayor and the Council which, at a minimum, shall include:

(1) The number of claims submitted;

(2) The geographic distribution of claims submitted and paid;

(3) The type of damage compensated by claims paid;

(4) The processing time for claims and disbursements;

(5) The total dollar amount of claims paid;

(6) The Flood Assistance Fund balance; and

(7) Administrative costs of operating the program.

(d) An action to recover for property damage may not be maintained against the District of Columbia or the Authority by a property owner who submits a claim pursuant to this section and is reimbursed through the Fund for the claim.

(e) Nothing in this section shall be construed to exclude from eligibility for the Program, a District property that is not in compliance with section P3008

of the 2006 International Residential Code or section 715 of the 2006 International Plumbing Code; provided, that upon receiving reimbursement through the Fund, a residential property owner shall install a backwater valve, pursuant to section P3008 of the 2006 International Residential Code and section 715 of the 2006 International Plumbing Code.

(f) No new rights or entitlements are created by this subchapter.

(Apr. 27, 2013, D.C. Law 19-293, § 3, 60 DCR 2613.)

Section references. — This section is referenced in § 8-105.71 and § 8-105.73.

Legislative history of Law 19-293. — See note to § 8-105.71.

§ 8-105.73. District of Columbia Flood Assistance Fund.

(a)(1) There is established as a nonlapsing fund the District of Columbia Flood Assistance Fund (“Fund”), which shall be used solely for the purposes stated in subsection (b) of this section. The Fund shall be funded by a flood assistance fund fee, established by the Flood Assistance Fund Manager pursuant to § 8-105.72. All funds collected from the fee defined in paragraph (3) of this subsection shall be deposited into the Fund and shall be disbursed by the Flood Assistance Fund Manager.

(2) Within 45 days of April 27, 2013, the Mayor shall transmit to the Council a proposed budget for the Fund.

(3) The Authority shall collect a flood assistance fund fee in an amount not to exceed \$0.30 per Equivalent Residential Unit per month from each property in the District; provided, that the fee shall not apply to District-owned properties or ratepayers enrolled in the Authority’s Customer Assistance Program.

(4) All funds deposited into the Fund, and any interest earned on the funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation until September 30, 2014, subject to authorization by Congress.

(b)(1) The money in the Fund shall be used solely:

(A) To reimburse District property owners and renters whose personal property or residential property sustained damage as a result of a sewer-line backup pursuant to § 8-105.72; and

(B) To allow the Authority to recover the actual administrative costs associated with collecting the fee on the District’s behalf.

(2)(A) Pursuant to paragraph (1)(A) of this subsection, the damage to the residential property or the personal property must have been sustained during the time period established in § 8-105.72(b)(2)(C); and

(B) The damage to the residential property or the personal property is not otherwise covered by an insurance policy.

(c) If, at the beginning of a fiscal year, the fund balance of the Fund exceeds the projected annual cost of all programs pursuant to subsection (b) of this section in that fiscal year by at least \$1 million, the Flood Assistance Fund Manager shall suspend payment and the collection of the fee defined in

subsection (a)(3) of this section, until the excess is estimated by the Flood Assistance Fund Manager to be under \$500,000.

(d) If, upon the expiration of this subchapter, there is a balance in the Fund, the excess funds shall be refunded back to the Authority's customers who have paid the fee pursuant to subsection (a)(3) of this section.

(Apr. 27, 2013, D.C. Law 19-293, § 4, 60 DCR 2613.)

Section references. — This section is referenced in § 8-105.71 and § 8-105.72.

Legislative history of Law 19-293. — See note to § 8-105.71.

§ 8-105.74. Applicability.

This subchapter shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

(Apr. 27, 2013, D.C. Law 19-293, § 5, 60 DCR 2613.)

Temporary Repeal of Section. — Section 5 of D.C. Law 20- (Act 20-91) repealed this section.

Section 8(b) of D.C. Law 20- (Act 20-91) provided that the act shall expire after 225 days of its having taken effect.

Emergency legislation. — For temporary repeal of section, see § 5 of the Fiscal Year 2013 Revised Budget Request Emergency Adjust-

ment Act of 2013 (D.C. Act 20-74, May 23, 2013, 60 DCR 7592).

For temporary repeal of section, see § 7013 of the Fiscal Year 2014 Budget Support Emergency Act of 2013 (D.C. Act 20-130, July 30, 2013, 60 DCR 11384).

Legislative history of Law 19-293. — See note to § 8-105.71.

§ 8-105.75. Sunset.

This subchapter shall expire on September 30, 2014.

(Apr. 27, 2013, D.C. Law 19-293, § 6, 60 DCR 2613.)

Legislative history of Law 19-293. — See note to § 8-105.71.

Subchapter IV-A. Restrictions on Bisphenol-A, Polybrominated Diphenyl Ethers, and Perchloroethylene.

§ 8-108.02. Prohibitions on polybrominated diphenyl ethers.

(a) No person or legal entity shall manufacture, sell, offer for sale, or distribute any product containing the penta or octa mixtures of polybrominated diphenyl ethers; provided, that subsection (a) of this section shall not apply to original equipment manufacturer replacement parts or equipment for vehicles manufactured prior to March 31, 2011, or to used vehicles.

(b) Except as provided in subsection (c) of this section, after January 1, 2013, no person or legal entity shall manufacture, sell, offer for sale, or distribute any of the following products:

(1) A mattress or mattress pad that contains the deca mixture of polybrominated diphenyl ethers (“Deca-BDE”);

(2) Upholstered furniture intended for indoor use in a home or other residential occupancy that contains Deca-BDE; or

(3) A television, monitor, or computer that has a plastic housing that contains Deca-BDE.

(c) The restrictions in subsection (b) of this section shall not apply to the following products containing Deca-BDE:

(1) Transportation vehicles or products or parts for use in transportation vehicles or transportation equipment;

(2) Products or equipment used in industrial or manufacturing processes;

(3) Products for use in a medical context, including a hospital, treatment facility, or nursing home; or

(4) Electronic wiring and cable used for power transmission.

(d) After January 1, 2014, no person or legal entity shall manufacture, sell, offer for sale, or distribute any product containing Deca-BDE; provided, that this section shall not apply to the following:

(1) A retailer that is in possession of a product prohibited for manufacture, lease, sale, or distribution for sale or lease under subsections (b) and (c) of this section from selling, recycling, or otherwise disposing of a product that is in the retailer’s or lessor’s inventory on or after the date that the prohibition takes effect;

(2) A person or legal entity from recycling a product that contains Deca-BDE;

(3) A person or legal entity from selling, leasing, recycling, or otherwise disposing of a product that contains recycled Deca-BDE;

(4) Any activity involving a product that contains Deca-BDE that occurs subsequent to the 1st sale at retail;

(5) Products for use in a medical context, including a hospital, treatment facility, or nursing home if a suitable substitute is not available;

(6) Vehicles manufactured prior to model year 2016, replacement parts or equipment for vehicles manufactured prior to model year 2016, or used vehicles; or

(7) Vehicles, replacements parts or replacement equipment for vehicles manufactured during or after model year 2016 if the use of a Deca-BDE-free alternative would create a substantial and unreasonable hardship for manufacturers or consumers.

(e) The Mayor may create or adjust a de minimis exemption for products affected by this section, if feasibility or undue hardship on manufacturing justifies such action. The Mayor may also exempt products from this section for as long as feasibility or undue hardship justifies the exemption.

(Mar. 31, 2011, D.C. Law 18-336, § 3, 58 DCR 605; Oct. 23, 2012, D.C. Law 19-191, § 13, 59 DCR 10166.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 added (e).

Legislative history of Law 19-191. — Law 19-191, the “Pesticide Education and Control

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-643. The Bill was adopted on first and second readings on June 26, 2012, and July 10, 2012, respectively.

Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-446 and transmitted to Congress for its review. D.C. Law 19-191 became effective on October 23, 2012.

Editor's notes. — Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

Subchapter I. Pesticide Operations.

CHAPTER 4. PESTICIDES.

Subchapter I. Pesticide Operations

Sec.

8-403. Pesticide applicators.

8-403.05. Notification to abutting properties.

8-404. Registered technicians.

8-411. Administration and enforcement; adoption of regulations.

8-418. Penalties.

Subchapter II. Pesticide Education and Control

8-431. Definitions.

8-432. District restricted-use and non-essential pesticides.

Sec.

8-433. Prohibited and restricted uses.

8-434. Exemptions.

8-435. Pesticide education. [Applicable when contingency met].

8-436. Annual reporting. [Applicable when contingency met].

8-437. Pesticide applicator reports.

8-438. Pesticide registration fee.

8-439. Penalties.

8-440. Rules.

§ 8-403. Pesticide applicators.

(a) *Licensing* — (1) No person shall purchase, use, or supervise the use of any restricted use pesticide unless he is licensed by the Mayor in accordance with this chapter and the rules and regulations promulgated thereto, except that a registered employee may purchase and use such pesticides under the direct supervision of a licensed commercial or public applicator.

(2) Application for a pesticide applicator's license shall be made in writing on a form prescribed by the Mayor. The Mayor shall establish fees in amounts sufficient to cover the cost of the licensing. A pesticide applicator license shall be valid for the period of time prescribed by the Mayor. The Mayor shall provide for the issuance of appropriate credentials for the applicator.

(b) *Certification* — (1) No person may be licensed to use any restricted use pesticide unless he has been certified by the Mayor in accordance with this chapter and the rules and regulations promulgated pursuant thereto.

(2) After a public hearing held in conformance with the provisions of subchapter I of Chapter 5 of Title 2, the Mayor shall prescribe regulations for the certification of private and commercial applicators.

(3) The Mayor shall establish categories and, where applicable, may establish subcategories, of commercial applicators, depending upon the types of pesticides used, the purposes for which they are used, the types of equipment required in their application, the degree of knowledge or skill required in their application, and other relevant factors.

(4) The Mayor shall require an applicant for commercial applicator certification to show, by written examination, and, as applicable, by practical testing, that he is competent in the proper handling, use, and application of

pesticides in the certification categories for which he has applied, and that he knows the dangers involved and precautions to be taken in connection with the use and application of such pesticides, and to meet such other requirements as the Mayor may hereafter prescribe.

(5) The Mayor shall develop procedures to ensure that all certified applicators continue to meet the requirements of changing technology and to assure a continuing level of competence and ability to use pesticides safely and properly.

(6) The Mayor shall establish a system for determining the competency of applicants for private applicator certification in the use and handling of pesticides.

(7) Application for certification shall be made in writing on a form prescribed by the Mayor. Applicator certification shall be valid for such period as prescribed by the Mayor. The Mayor shall provide for the issuance of appropriate credentials specifying the categories in which the applicator has demonstrated competency.

(8) If the Mayor does not certify the applicator under this section, he shall inform the applicant in writing of the reasons therefor.

(9) When determining the competency of an applicator, the Mayor shall ensure that an applicator demonstrates mastery of the principles of integrated pest management.

(Apr. 18, 1978, D.C. Law 2-70, § 4, 24 DCR 6867; Oct. 23, 2012, D.C. Law 19-191, § 12(a), 59 DCR 10166.)

Section references. — This section is referenced in § 8-408.

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 added (b)(9).

Legislative history of Law 19-191. — Law 19-191, the “Pesticide Education and Control Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-643. The Bill was adopted on first and second readings on

June 26, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-446 and transmitted to Congress for its review. D.C. Law 19-191 became effective on October 23, 2012.

Editor’s notes. — Applicability of D.C. Law 19-191: Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

§ 8-403.05. Notification to abutting properties.

A certified applicator or registered technician, before applying a restricted-use pesticide outside the confines of an enclosed structure, shall take reasonable actions to give notice of the date and approximate time of any such pesticide application to property that abuts the property to be treated.

(Apr. 18, 1978, D.C. Law 2-70, § 4e, as added Oct. 23, 2012, D.C. Law 19-191, § 12(b), 59 DCR 10166.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 added this section.

Legislative history of Law 19-191. — See note to § 8-403.

Editor’s notes. — Applicability of D.C. Law 19-191: Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

§ 8-404. Registered technicians.

(a) No person, except those acting as a private applicator or licensed as a commercial applicator, public applicator, or registered technician shall apply any pesticide in the District for a fee.

(b) The application to become a licensed registered technician shall be made in writing on a form prescribed by the Mayor, and the registration shall be valid for the time period prescribed by the Mayor. The Mayor shall, by regulation, establish appropriate education and training requirements for registration as a registered technician.

(c) The Mayor shall provide for the issuance of appropriate credentials for all registrants.

(Apr. 18, 1978, D.C. Law 2-70, § 5, 24 DCR 6867; Oct. 23, 2012, D.C. Law 19-191, § 12(c), 59 DCR 10166.)

Section references. — This section is referenced in § 8-401 and § 8-408.

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 rewrote this section.

Legislative history of Law 19-191. — See note to § 8-403.

Editor's notes. — Applicability of D.C. Law 19-191: Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

§ 8-411. Administration and enforcement; adoption of regulations.

(a)(1) The Mayor shall administer and enforce the provisions of this chapter, and is authorized to promulgate, rescind, and amend regulations, after a public hearing following due notice in conformance with the provisions of subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], to carry out the provisions of this chapter.

(2) Within 570 days of the effective date of the Pesticide Education and Control Amendment Act of 2012, passed on 2nd reading on July 10, 2012 (Enrolled version of Bill 19-643) [D.C. Law 19-191, effective October 23, 2012, and applicable October 1, 2013], the Mayor shall issue rules to implement the provisions of that amendatory act [D.C. Law 19-191].

(b) The Mayor is authorized, after a public hearing following due notice, to declare any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other microorganism on or in living man or other living animals) which is injurious to the environment or the health of man or other animals to be a pest.

(c) The Mayor is authorized to prescribe pesticides and equipment to be used; restrict or prohibit the use of such materials to the extent necessary to protect the public health and safety; and to take such other action as he may deem necessary to prevent any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

(d) When the Mayor has reasonable cause to believe a pesticide or device is being distributed, stored, transported, offered for sale, or used in violation of

any of the provisions of this chapter, or any of the regulations prescribed under the authority of this chapter, he may issue a written "stop sale, use, or removal" order to the owner or custodian of any such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

(e) Any pesticide or device that is being transported, or having been transported is sold or offered for sale in the District, or is imported from a foreign country, in violation of any of the provisions of this chapter, may be proceeded against in any court of competent jurisdiction by a process in rem for condemnation if:

(1) In the case of a pesticide, (A) it is adulterated or misbranded; (B) it is not registered pursuant to the provisions of this chapter; (C) its labeling fails to bear the information required by the FIFRA; (D) it is not colored or discolored and such coloring or discoloring is required under the FIFRA; or (E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) In case of a device, it is misbranded; or

(3) In the case of a pesticide or device, when used in accordance with the requirements imposed under this chapter and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claim and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(f) If the pesticide or device is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if sold, less the court costs, shall be paid into the District Treasury and credited to the general fund; provided, that the pesticide or device shall not be sold contrary to the provisions of this chapter, the FIFRA, or the laws of the jurisdiction in which it is sold; provided further, that upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned upon assurances that the pesticide shall not be sold or otherwise disposed of contrary to the provisions of this subchapter, the FIFRA, or the laws of any jurisdiction in which it is sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be to the proceedings used for the condemnation of insanitary buildings under § 6-903.

(g) When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

(h) Nothing in this chapter shall be construed as requiring the District to prosecute or institute other proceedings for minor violations of the chapter whenever the Mayor believes that the public interest will be best served by a suitable notice in writing to the alleged violator.

(i) The Mayor may bring an action to enjoin the violation or threatened violation of any provision of this chapter or any regulation made pursuant to this chapter.

(j) In order to comply with section 4 of the FIFRA [7 U.S.C. § 136b], the Mayor is authorized to make such reports to the Environmental Protection Agency in the form and containing the information as the Administrator may from time to time require.

(Apr. 18, 1978, D.C. Law 2-70, § 12, 24 DCR 6867; Oct. 23, 2012, D.C. Law 19-191, § 12(d), 59 DCR 10166.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 added (a)(2).

Legislative history of Law 19-191. — See note to § 8-403.

Editor's notes. — Applicability of D.C. Law 19-191: Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

§ 8-418. Penalties.

(a) A person violating a provision of this subchapter or of a rule or regulation promulgated pursuant thereto, shall be fined according to the schedule set forth in Chapter 32 of Title 16 of the District of Columbia Municipal Regulations, or be imprisoned for not more than 90 days, or both.

(b) The Department may, as set forth by the Mayor in regulations, revoke or suspend the license of a pesticide operator or applicator who violates § 8-433 more than once in a calendar year in a manner that endangers human health or the environment.

(Apr. 18, 1978, D.C. Law 2-70, § 19, 24 DCR 6867; Oct. 5, 1985, D.C. Law 6-42, § 414, 32 DCR 4450; Oct. 23, 2012, D.C. Law 19-191, § 12(e), 59 DCR 10166.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-191 rewrote this section.

Legislative history of Law 19-191. — See note to § 8-403.

Editor's notes. — Applicability of D.C. Law 19-191: Section 14(a) of D.C. Law 19-191 provided that §§ 1 through 5 and 8 through 13 of the act shall apply as of October 1, 2013.

Subchapter II. Pesticide Education and Control.

§ 8-431. Definitions.

For the purposes of this subchapter, the term:

(1) "Agriculture" means land whose primary purpose and use is to raise crops.

(2) "Child-occupied facility" means a building or portion of a building which, as part of its function, receives children under the age of 6 years on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" includes day care centers, nurseries, pre-school centers, kindergarten classrooms, child development centers, child development homes, child development facilities, child-placing agencies, infant care centers, and similar entities.

(3) "Department" means the District Department of the Environment.

(4) "District property" means buildings or land owned, leased, or otherwise occupied by the District government.

(5) "District restricted use" means a pesticide identified by the Department as requiring additional restrictions for use to prevent a hazard to human health, the environment, or property as set forth in § 8-432.

(6) "FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, approved June 23, 1947 (61 Stat. 163; 7 U.S.C. § 136 et seq.).

(7) "Forestry" means trees on land that is at least one acre in size and at least 10% occupied by forest trees of any size or formerly having had such tree cover and not currently developed for non-forest use.

(8) "Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage economically, and with a strong preference for examining a range of cultural, mechanical, biological, and chemical practices and selecting a method presenting the least possible hazard to people, property, and the environment.

(9) "Minimum risk" means a pesticide registered with the Department, but exempt from federal registration under section 25(b) of the FIFRA [7 U.S.C. § 136w].

(10) "Non-essential" means a pesticide that is non-critical to managing pests that threaten health, property, or the environment in the District as set forth in § 8-432.

(11) "Pest" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(12) "Pest management" means the control of plants, insects, herbs, or rodents with chemical agents deployed as pesticides.

(13) "Pesticide" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299); provided, that the definition shall not include:

(A) Fertilizers and other plant supplements whose primary purpose is to provide nutrition to plant-life and not to repel, treat, or control pests;

(B) Pesticides exempt under the FIFRA and its implementing regulations, specifically those pesticides exempted under section 25(b) of FIFRA [7 U.S.C. § 136w] and 40 C.F.R. 152.25(f), subject to reclassification as set forth in § 8-432;

(C) Individual repellents, personalized devices, and other agents not necessarily classified under FIFRA but employed by individuals for protection from pests;

(D) Sanitizers, disinfectants, and antimicrobial agents; and

(E) Other chemicals, devices, or substances excluded by the Department in regulations.

(14) "Pesticide application" means the spraying, laying, injecting, delivering, or other action whereby plants, insects, herbs, or other pests are controlled by a registered pesticide or a chemical agent that includes a registered pesticide.

(15) "Pesticide applicator" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(16) "Pesticide operator" has the same meaning as provided in section 2299 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2299).

(17) "Pesticide registration fee" means the fee set for product registration by section 2506 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2506).

(18) "Reduced risk" has the same meaning as provided in section 2209 of Title 20 of the District of Columbia Municipal Regulations (20 DCMR § 2209).

(19) "Restricted use" means any pesticide or pesticide use classified as restricted through the process outlined by the Administrator of the United States Environmental Protection Agency in Subpart I of Part 152 of Subchapter E of Chapter 1 of Title 40 of the Code of Federal Regulations (40 C.F.R. § 152.160 et seq.), or a pesticide so designated by the Department by the process described in § 8-432.

(20) "School" means a public or private facility whose primary purpose is to provide K-12 educational services and includes adjacent or contiguous recreation centers or athletic fields owned or maintained by the educational facility.

(21) "University" means the University of the District of Columbia.

(22) "Waterbody" means those waters located within the District that are:

(A) Subject to the ebb and flow of the tide; or

(B) Free flowing, unconfined, and above-ground rivers, streams, or creeks.

(23) "Waterbody-contingent property" means property within 25 feet of a waterbody.

(Oct. 23, 2012, D.C. Law 19-191, § 2, 59 DCR 10166.)

Section references. — This section is referenced in § 8-440.

Legislative history of Law 19-191. — Law 19-191, the "Pesticide Education and Control Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-643. The Bill was adopted on first and second readings on June 26, 2012, and July 10, 2012, respectively.

Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-446 and transmitted to Congress for its review. D.C. Law 19-191 became effective on October 23, 2012.

Editor's notes. — Section 14(a) of D.C. Law 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-432. District restricted-use and non-essential pesticides.

(a) The Department shall create and maintain lists of pesticides classified as District restricted-use or non-essential.

(b) The Department shall, through regulations, designate as non-essential a pesticide that is non-critical to pest management in the District.

(1) Critical pest management includes controlling:

(A) Plants that are poisonous to touch or may cause damage to a structure infrastructure; or

(B) Insects that bite or sting, are venomous or disease-carrying, or that may cause damage to a structure or infrastructure.

(2) The Department shall presume that a pesticide should not be classified as non-essential if it is intended primarily for use on or for:

- (A) Agriculture;
- (B) Forestry;
- (C) Promotion of public health or safety; or
- (D) Other prescribed uses set forth in regulation.

(c) The Department shall, through regulations, designate as District restricted-use any pesticide that:

(1) When used as directed or in accordance with commonly recognized practice requires additional restrictions for that use to prevent a hazard to human health, the environment, or property; or

(2) The Department determines presents a significant, scientifically sound basis justifying that reclassification.

(d) The Department shall offer an opportunity for public comment conforming to the conditions set forth in subsection (e) of this section before classifying as District restricted-use any pesticide that is not designated as restricted-use under 40 CFR § 152.175 or adding restrictions to a restricted-use pesticide designated under 40 CFR § 152.175.

(e) The opportunity for public comment required by subsection (d) of this section shall include at least one published notice in the District of Columbia Register regarding the proposed reclassification of a particular pesticide and a comment period of at least 30 days; provided, that the agency is required to hold a public hearing only if significant public interest is expressed during the 30-day comment period.

(Oct. 23, 2012, D.C. Law 19-191, § 3, 59 DCR 10166.)

Section references. — This section is referenced in § 8-431 and § 8-440.

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(a) of D.C. Law 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-433. Prohibited and restricted uses.

(a) No person or entity shall apply non-essential pesticides to schools, child-occupied facilities, waterbody-contingent property, or District property, except as provided in § 8-434.

(b) The Department may establish restrictions for District restricted-use pesticides when they are to be used on schools, child-occupied facilities, waterbody-contingent property, or District property.

(Oct. 23, 2012, D.C. Law 19-191, § 4, 59 DCR 10166.)

Section references. — This section is referenced in § 8-418, § 8-434, and § 8-439.

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(a) of D.C. Law 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-434. Exemptions.

(a) Section 8-433 shall not apply to the use of a pesticide for the purpose of improving or maintaining water quality at:

- (1) Drinking water treatment plants;
- (2) Wastewater treatment plants;
- (3) Reservoirs and swimming pools; and
- (4) Related collection, distribution, and treatment facilities.

(b) A person or entity may apply to the Department for an exemption from § 8-433 for a District restricted-use pesticide. The Department may grant an exemption if the applicant demonstrates:

(1) That the applicant has made a good-faith effort to seek effective and economical alternatives to the restricted-use or District restricted-use pesticides, and they are unavailable;

(2) That providing a waiver will not violate District or federal law; and

(3) That use of the restricted-use or District restricted-use pesticide on the property prohibited under § 8-433 is linked to a need to protect health, the environment, or property.

(c) A person or entity may apply to the Department for an exemption from § 8-433 for a non-essential pesticide. The Department may grant an exemption to apply a non-essential pesticide on property prohibited under § 8-433 if the applicant demonstrates:

(1) That effective alternatives are unavailable;

(2) That providing a waiver will not violate District or federal law; and

(3) That use of the non-essential pesticide is critical and necessary to protect human health or prevent imminent and significant economic damage.

(d) A person or entity subject to § 8-433 may apply to the Department for an emergency exemption if an emergency pest outbreak poses an imminent threat to public health or if significant economic damage would result from the inability to use a pesticide prohibited or restricted by § 8-433. The Department shall impose specific conditions for the granting of emergency applications.

(e) The Department may, as set forth by the Mayor in regulations, require that an applicant who applies for substantially the same exemption at substantially the same property due to managing pests with proper adherence to IPM principles attend a District-approved IPM course.

(Oct. 23, 2012, D.C. Law 19-191, § 5, 59 DCR 10166.)

Section references. — This section is referenced in § 8-433.

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(a) of D.C. Law 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-435. Pesticide education. [Applicable when contingency met].

[Not funded].

(Oct. 23, 2012, D.C. Law 19-191, § 6, 59 DCR 10166.)

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(b) of D.C. Law 19-191 provided that §§ 6 and 7 of the act shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as cer-

tified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register, but not before October 1, 2013.

§ 8-436. Annual reporting. [Applicable when contingency met].

[Not funded].

(Oct. 23, 2012, D.C. Law 19-191, § 7, 59 DCR 10166.)

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(b) of D.C. Law 19-191 provided that §§ 6 and 7 of the act shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as cer-

tified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register, but not before October 1, 2013.

§ 8-437. Pesticide applicator reports.

Pesticide applicators shall submit to the Department records of pesticide applications to property in the District on an annual basis in a form that the Department shall prescribe; provided, that applications of minimum-risk and reduced-risk pesticides are exempt from this requirement.

(Oct. 23, 2012, D.C. Law 19-191, § 8, 59 DCR 10166.)

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(a) of D.C. Law

provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-438. Pesticide registration fee.

The Department shall set a pesticide registration fee of at least \$200.

(Oct. 23, 2012, D.C. Law 19-191, § 9, 59 DCR 10166.)

Legislative history of Law 19-191. — See note to § 8-431.

Editor's notes. — Section 14(a) of D.C. Law

19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, and 13 of the act shall apply as of October 1, 2013.

§ 8-439. Penalties.

(a) A violation of this subchapter shall be a civil infraction for purposes of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective July 16, 1985 (Law 6-42; D.C. Code § 2-1801.01 et seq.) ("Civil Infractions Act"). Civil fines, penalties, and fees may be imposed as sanctions for any infraction of the provisions of this subchapter, or the rules issued under authority of this subchapter, pursuant to the Civil Infractions Act. Adjudication of any infractions shall be pursuant to the Civil Infractions Act.

(b) The Department may, as set forth by the Mayor in regulations, suspend or revoke the license of a pesticide operator or applicator who violates § 8-433

more than once in a calendar year in a manner that endangers human health or the environment.

(Oct. 23, 2012, D.C. Law 19-191, § 10, 59 DCR 10166.)

Legislative history of Law 19-191. — See 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, note to § 8-431. 12, and 13 of the act shall apply as of October 1,

Editor's notes. — Section 14(a) of D.C. Law 2013.

§ 8-440. Rules.

(a) Within 570 days of October 23, 2012, the Mayor shall issue rules to implement the provisions of §§ 8-431 through 8-439.

(b) For rules issued pursuant to § 8-432, the Department shall afford great weight to the decisions made pursuant to section 18 of the FIFRA [7 U.S.C. § 136p].

(Oct. 23, 2012, D.C. Law 19-191, § 11, 59 DCR 10166.)

Legislative history of Law 19-191. — See 19-191 provided that §§ 1, 2, 3, 4, 5, 8, 9, 10, 11, note to § 8-431. 12, and 13 of the act shall apply as of October 1,

Editor's notes. — Section 14(a) of D.C. Law 2013.

SUBTITLE B. WASTE DISPOSAL AND MANAGEMENT.

CHAPTER 8. LITTER CONTROL ADMINISTRATION.

Sec.

8-802. Enforcement of regulations.

§ 8-802. Enforcement of regulations.

(a)(1) The Mayor of the District of Columbia ("Mayor") shall enforce the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988, §§ 601, 603, 604, 605, 606(a), (c), and (h), 607(a), (b), (c), (d), (e), (f), (g), (h), and (j), 608(a), 609(a), and 612 of Chapter 3 in Title 8 of the District of Columbia Health Regulations, enacted June 29, 1971 (Reg. 71-21; 21 DCMR 700.1 *et seq.*), §§ 3, 4, 5, 6, and 7 of Solid Waste Collection: Containers to be Used, effective February 21, 1973 (19 DCR 497; 21 DCMR 708), and a number of rules recorded in §§ 2221.6, 2407.12, and 2407.13 of 18 DCMR, §§ 101, 102, 103, 104, 108, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR. Contested cases arising from violations of the regulations listed in this section shall be adjudicated in accordance with the system provided in §§ 8-804, 8-805, and 8-808.

(2) Violations of the regulations listed in paragraph (1) of this subsection shall be subject to the civil administrative system and the civil sanctions provided in this chapter.

(b) The adjudication system shall comply with Chapter 5 of Title 2 [§ 2-501 *et seq.*].

(Mar. 25, 1986, D.C. Law 6-100, § 3(a), (b), 33 DCR 781; Oct. 9, 1987, D.C. Law 7-38, § 2(a), 34 DCR 5326; Mar. 16, 1989, D.C. Law 7-226, § 19(a), 36 DCR 595; Feb. 5, 1994, D.C. Law 10-68, § 17, 40 DCR 6311; Oct. 19, 2000, D.C. Law 13-172, § 909(a), 47 DCR 6308; Nov. 16, 2006, D.C. Law 16-175, § 2, 53 DCR 6499; Mar. 20, 2009, D.C. Law 17-314, § 2(a), 56 DCR 200; Mar. 25, 2009, D.C. Law 17-353, § 124(a), 56 DCR 1117.)

Section references. — This section is referenced in § 2-1831.03, § 8-803, § 8-807, § 8-808, § 8-811, § 8-812, and § 8-902.

Editor's notes. — Section 4 of D.C. Law 19-289 would have rewritten (a)(1) to read as follows: "The Mayor of the District of Columbia ("Mayor") shall enforce the District of Columbia Solid Waste Management and Multi-Material Recycling Act of 1988, effective March 16, 1989 (D.C. Law 7-226); D.C. Official Code § 8-1001 et seq., §§ 601, 603, 604, 605, 606(a), (c), and (h), 607(a), (b), (c), (d), (e), (f), (g), (h), and (j), 608(a), 609(a), and 612 of Chapter 3 in Title 8 of the District of Columbia Health Regulations, enacted June 29, 1971 (Reg. 71-21; 21 DCMR 700.1 et seq.), §§ 3, 4, 5, 6, and 7 of Solid Waste Collection: Containers to be Used, effective February 21, 1973 (19 DCR 497; 21 DCMR 708), a number of rules recorded in § 2221.6, 2407.12, and 2407.13 of 18 DCMR, §§ 101, 102, 103, 104, 900.7, 900.8, 900.10, 1000, 1001, 1002, 1005, 1008, 1009, 2000, 2001, 2002, and 2010 of 24 DCMR, and any rules relating to

signs on public space, public buildings, or other property owned or controlled by the District issued pursuant to sections 1 and 4 of An Act To regulate the erection, hanging, placing, painting, display, and maintenance of outdoor signs and other forms of exterior advertising within the District of Columbia, approved March 3, 1931 (46 Stat. 1486; D.C. Official Code §§ 1-303.21 and 1-303.23)."

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 4: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

CHAPTER 10. SOLID WASTE MANAGEMENT AND MULTI-MATERIAL RECYCLING.

Subchapter III-B. Construction and Demolition Waste Recycling Accountability

Sec.

8-1071. Definitions. [Applicable when funded].

8-1072. Certification. [Applicable when funded].

8-1073. Construction and demolition recycling accountability. [Applicable when funded].

Sec.

8-1074. Rules. [Applicable when funded].

8-1075. Revocation. [Applicable when funded].

8-1076. Penalties. [Applicable when funded].

8-1077. Construction and Demolition Waste Recycling Fund. [Applicable when funded].

Subchapter III-B. Construction and Demolition Waste Recycling Accountability.

§ 8-1071. Definitions. [Applicable when funded].

[Not funded].

Legislative history of Law 19-294. — Law 19-294, the "Construction and Demolition Waste Recycling Accountability Act of 2012,"

was introduced in Council and assigned Bill No. 19-1032. The Bill was adopted on first reading on December 4, 2012. Signed by the

Mayor on January 31, 2013, it was assigned Act No. 19-662 and transmitted to Congress for its review. D.C. Law 19-294 became effective on April 27, 2013.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided

that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1072. Certification. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 3, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1073. Construction and demolition recycling accountability. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 4, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1074. Rules. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 5, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1075. Revocation. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 6, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1076. Penalties. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 7, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 8-1077. Construction and Demolition Waste Recycling Fund. [Applicable when funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-294, § 8, 60 DCR 2619.)

Legislative history of Law 19-294. — See note to § 8-1071.

Editor's notes. — Applicability of D.C. Law 19-294: Section 9 of D.C. Law 19-294 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

TITLE 9. TRANSPORTATION SYSTEMS.

SUBTITLE III. NATIONAL CAPITAL REGION TRANSPORTATION.

Chapter

11. National Capital Region Transportation.

SUBTITLE IV. MISCELLANEOUS.

11A. Bus Shelters.

SUBTITLE III. NATIONAL CAPITAL REGION TRANSPORTATION.

CHAPTER 11. NATIONAL CAPITAL REGION TRANSPORTATION.

Subchapter IV. Washington Metropolitan Area Transit Authority Compact.

§ 9-1107.01. Congressional consent given to Compact amendment.

Section references. — This section is referenced in § 1-1161.01, § 1-1162.24, § 1-1162.25, § 9-1107.03, § 9-1107.04, § 9-1107.05, § 9-1107.06, § 9-1109.01, and § 50-921.31.

CASE NOTES

ANALYSIS

Actions and proceedings.

—Sovereign immunity, actions and proceedings.

Arbitration.

Actions and proceedings.

— Sovereign immunity, actions and proceedings.

Defendant transit authority was immune from suit under 42 U.S.C.S. § 1983 because the states that signed the compact creating the authority conferred their sovereign immunities upon the authority. *McMillan v. Wash. Metro.*

Area Transit Auth., — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 147057 (D.D.C. Oct. 12, 2012).

Arbitration.

Defendant transit authority was entitled to summary judgment with respect to plaintiff employee's claims—that he was denied bonus money and that he was discharged without a hearing—were properly construed as labor disputes because he neither grieved nor submitted them to arbitration, and thus, the claims were not properly before the court. *McMillan v. Wash. Metro. Area Transit Auth.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 147057 (D.D.C. Oct. 12, 2012).

SUBTITLE IV. MISCELLANEOUS.

CHAPTER 11A. BUS SHELTERS.

Sec.

9-1159. Relation to other provisions of law. *

§ 9-1159. Relation to other provisions of law.

The provisions of § 1-303.22 and Title 5A-1, Article 14 of the Building Code of the District of Columbia, pertaining to outdoor signs in the District of Columbia, shall not pertain to the advertisement resulting from the franchise agreement.

(May 10, 1980, D.C. Law 3-67, § 10, 27 DCR 1266.)

Editor's notes. — Section 5 of D.C. Law 19-289 rewrote the section to read as follows: "The provisions of §§ 1-303.21 and 1-303.23, and rules issued pursuant to those sections, shall not pertain to the advertisement resulting from the franchise agreement."

Section 9 of D.C. Law 19-289 provided: "Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded."

Applicability of D.C. Law 19-289, § 5: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

DIVISION II. JUDICIARY AND JUDICIAL PROCEDURE.

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.

Chapter

11. Family Court of the Superior Court.

§ 11-723. Certification of questions of law.

CASE NOTES

Workers' compensation.

Employer was not liable to a mother in a wrongful death and survival action after an employee committed suicide using a gun provided by the employer because the employee's suicide was an intervening act that precluded the employer's liability under District of Columbia law, and the mother effectively admitted that the suicide was a willful and intentional act when the mother argued that the District of Columbia Workers' Compensation Act, D.C. Code § 32-1501 et seq., was inappli-

cable pursuant to D.C. Code § 32-1503(d); the mother was not entitled to have questions certified to the District of Columbia Court of Appeals pursuant to D.C. Code § 11-723(a) because certification based on the possibility that the District of Columbia Court of Appeals might adopt additional exceptions to its general rule as to suicide had no logical stopping point. *Rollins v. Wackenhut Servs.*, — F.3d —, 2012 U.S. App. LEXIS 26549 (D.C. Cir. Dec. 28, 2012).

CHAPTER 11. FAMILY COURT OF THE SUPERIOR COURT.

Sec.

11-1104. Administration.

§ 11-1104. Administration.

(a) *"One Family, One Judge" Requirement for Cases and Proceedings.* — To the greatest extent practicable, feasible, and lawful, if an individual who is a party to an action or proceeding assigned to the Family Court has an immediate family or household member who is a party to another action or proceeding assigned to the Family Court, the individual's action or proceeding shall be assigned to the same judge or magistrate judge to whom the immediate family member's action or proceeding is assigned.

(b) *Retention of Jurisdiction Over Cases.* —

(1) *In general.* — In addition to the requirement of subsection (a), any action or proceeding assigned to the Family Court of the Superior Court shall remain under the jurisdiction of the Family Court until the action or proceeding is finally disposed, except as provided in paragraph (2) (D).

(2) *One family, one judge.* —

(A) *For the duration.* — An action or proceeding assigned pursuant to this subsection shall remain with the judge or magistrate judge in the Family Court to whom the action or proceeding is assigned for the duration of the

action or proceeding to the greatest extent practicable, feasible, and lawful, subject to subparagraph (2) (C).

(B) *All cases involving an individual.* — If an individual who is a party to an action or proceeding assigned to the Family Court becomes a party to another action or proceeding assigned to the Family Court, the individual's subsequent action or proceeding shall be assigned to the same judge or magistrate judge to whom the individual's initial action or proceeding is assigned to the greatest extent practicable and feasible.

(C) *Family Court case retention.* — If the full term of a Family Court judge to whom the action or proceeding is assigned is completed prior to the final disposition of the action or proceeding, the presiding judge of the Family Court shall ensure that the matter or proceeding is reassigned to a judge serving on the Family Court.

(D) *Exception.* — A judge whose full term on the Family Court is completed but who remains in Superior Court may retain the case or proceeding for not more than 6 months or, in extraordinary circumstances, for not more than 12 months after ceasing to serve if —

(i) the case remains at all times in full compliance with Public Law 105-89, if applicable; and

(ii) if Public Law 105-89 is applicable, the chief judge determines, in consultation with the presiding judge of the Family Court, based on the record in the case and any unique expertise, training or knowledge of the case that the judge might have, that permitting the judge to retain the case would lead to permanent placement of the child more quickly than reassignment to a judge in the Family Court.

(3) *Standards of judicial ethics.* — The actions of a judge or magistrate judge in retaining an action or proceeding under this paragraph shall be subject to applicable standards of judicial ethics.

(c) *Training Program.* —

(1) *In general.* — The chief judge, in consultation with the presiding judge of the Family Court, shall carry out an ongoing program to provide training in family law and related matters for judges of the Family Court and other judges of the Superior Court who are assigned Family Court cases, including magistrate judges, attorneys who practice in the Family Court, and appropriate nonjudicial personnel, and shall include in the program information and instruction regarding the following:

(A) Child development.

(B) Family dynamics, including domestic violence.

(C) Relevant Federal and District of Columbia laws.

(D) Permanency planning principles and practices.

(E) Recognizing the risk factors for child abuse.

(F) Any other matters the presiding judge considers appropriate.

(2) *Use of cross-training.* — The program carried out under this section shall use the resources of lawyers and legal professionals, social workers, and experts in the field of child development and other related fields.

(d) *Accessibility of Materials, Services, and Proceedings; Promotion of "Family-Friendly" Environment.* —

(1) *In general.* — To the greatest extent practicable, the chief judge and the presiding judge of the Family Court shall ensure that the materials and services provided by the Family Court are understandable and accessible to the individuals and families served by the Family Court, and that the Family Court carries out its duties in a manner which reflects the special needs of families with children.

(2) *Location of proceedings.* — To the maximum extent feasible, safe, and practicable, cases and proceedings in the Family Court shall be conducted at locations readily accessible to the parties involved.

(e) *Integrated Computerized Case Tracking and Management System.* — The Executive Officer of the District of Columbia courts under § 11-1703 shall work with the chief judge of the Superior Court—

(1) to ensure that all records and materials of cases and proceedings in the Family Court are stored and maintained in electronic format accessible by computers for the use of judges, magistrate judges, and nonjudicial personnel of the Family Court, and for the use of other appropriate offices of the District government in accordance with the plan for integrating computer systems prepared by the Mayor of the District of Columbia under section 4(b) [4(c)] of the District of Columbia Family Court Act of 2001 [§ 11-1101, note];

(2) to establish and operate an electronic tracking and management system for cases and proceedings in the Family Court for the use of judges and nonjudicial personnel of the Family Court, using the records and materials stored and maintained pursuant to paragraph (1); and

(3) to expand such system to cover all divisions of the Superior Court as soon as practicable.

(Jan. 8, 2002, 115 Stat. 2108, Pub. L. 107-114, § 4(a).)

Section references. — This section is referenced in § 11-908A and § 11-1106.

the District of Columbia Family Court Act of 2001, referred to in paragraph (e)(1), is classified to § 11-721.

References in text. — Section 4(b) [4(c)] of

TITLE 12. RIGHT TO REMEDY.

CHAPTER 3. LIMITATION OF ACTIONS.

§ 12-301. Limitation of time for bringing actions.

Section references. — This section is referenced in § 8-634.10, § 12-308, and § 28-3905.

CASE NOTES

ANALYSIS

Emotional distress and negligence, accrual of right of action or defense.
Federal civil rights actions.

Breach of contract, limitation applicable to action.
—Contracts in general, limitation applicable to action.
—Fraud, limitation applicable to action.

—Legal malpractice, limitation applicable to action.

Emotional distress and negligence, accrual of right of action or defense.

In a breach of contract case arising from the non-renewal of a scholarship in which a university and others moved to dismiss a student-athlete's claims pursuant to Fed. R. Civ. P. 12(b)(6), the student's claims for breach of the duty of good faith and fair dealing, fraud in the inducement, intentional infliction of emotional distress, and negligent infliction of emotional distress were barred by the three-year statute of limitations in D.C. Code, § 12-301(8). The statute of limitations for all of the claims began to run at the end of January 2007 when the student was informed that he could no longer wrestle and that his scholarship would not be renewed, and the complaint was not filed until June 29, 2010, six months after the deadline. *Lopiccolo v. Am. Univ.*, 840 F. Supp. 2d 71, 2012 U.S. Dist. LEXIS 1300 (D.D.C. Jan. 5, 2012).

Federal civil rights actions.

Even if Vienna Convention on Consular Relations art. 36(1)(b), Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261 created rights that were enforceable under 42 U.S.C.S. § 1983, a matter that the court of appeals did not decide, a claim that the District of Columbia failed to notify a prisoner of his consular access rights was untimely under D.C. Code § 12-301(8). The alleged violation was immediately actionable upon the prisoner's arrest, and no continuing violation was shown; even if the District had a continuing duty to notify, that duty ceased when the prisoner escaped from District custody. *Earle v. District of Columbia*, — F.3d —, 2012 U.S. App. LEXIS 26550 (D.C. Cir. Dec. 28, 2012).

Breach of contract, limitation applicable to action.

In a breach of contract case arising from the non-renewal of a scholarship in which a university and others moved to dismiss a student-athlete's claim pursuant to Fed. R. Civ. P. 12(b)(6), the student's breach of contract claim was barred by the three-year statute of limitations in D.C. Code, § 12-301(7). The statute of limitations for his breach of contract claim began to run at the end of January 2007 when the student was informed that he could no

longer wrestle and that his scholarship would not be renewed, and the complaint was not filed until June 29, 2010, six months after the deadline. *Lopiccolo v. Am. Univ.*, 840 F. Supp. 2d 71, 2012 U.S. Dist. LEXIS 1300 (D.D.C. Jan. 5, 2012).

— Contracts in general, limitation applicable to action.

When a professor was denied tenure by a university, the professor's breach-of-contract claim was barred by the statute of limitations in D.C. Code § 12-301(7) because, with respect to the university's alleged failure to evaluate the professor and to provide the professor with specific tenure criteria, the university's latest failure to evaluate the professor would have occurred outside the three-year limitations period. The statute of limitations did not begin to run, as the professor contended, only after the university denied the professor's tenure application. *Wright v. Howard Univ.*, 60 A.3d 749, 2013 D.C. App. LEXIS 39 (2013).

— Fraud, limitation applicable to action.

Because there was a strong argument that plaintiff share buyers were aware, at the latest, of the financial difficulties that led to a company's demise on February 27, 2008, when the company issued the annual report for the year ending December 31, 2007, and plaintiffs did not file their claims until June 2011, their common law fraud claims were likely time-barred by D.C. Code § 12-301(8). *Phelps v. Stomber*, 883 F. Supp. 2d 188, 2012 U.S. Dist. LEXIS 113186 (D.D.C. Aug. 13, 2012).

— Legal malpractice, limitation applicable to action.

In a legal malpractice case in which the attorneys and the law firms filed motions for summary judgment, arguing that the clients' claims were time-barred, the statute of limitations for legal malpractice claims in the District of Columbia was three years from the time that the right to maintain the cause of action accrued. The parties had yet to engage in discovery, and, given the factual ambiguities surrounding the commencement of the statute of limitations, a period of discovery was warranted prior to ruling on defendants' motions. *Seed Co. v. Westerman*, 840 F. Supp. 2d 116, 2012 U.S. Dist. LEXIS 1222 (D.D.C. Jan. 5, 2012).

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

Section references. — This section is referenced in § 1-615.54, § 2-413, and § 2-424.

CASE NOTES

ANALYSIS

Necessity of notice.
Notice not required.
Sufficiency of evidence.

Necessity of notice.

Compliance with D.C. Code § 12-309 is not a jurisdictional requirement. *Maldonado v. District of Columbia*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 23503 (D.D.C. Feb. 21, 2013).

Notice not required.

Former probationary employee's suit for retaliatory discharge under the DC Human Rights Act was not barred by his failure to provide notice because D.C. Code § 12-309 applied only to claims for unliquidated damages and the employee only sought equitable relief. *Mpoy v. Fenty*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90960 (D.D.C. July 2, 2012).

In a former probationary employee's suit based on his allegedly retaliatory discharge, the employee's breach of contract claim was not barred by his failure to provide notice because D.C. Code § 12-309 applied only to claims for unliquidated damages, and thus, it only applied to actions sounding in tort. *Mpoy v. Fenty*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90960 (D.D.C. July 2, 2012).

In a former probationary employee's suit based on his allegedly retaliatory discharge,

the employee's civil conspiracy claim was not barred by his failure to provide notice because D.C. Code § 12-309 applied only to claims against the District of Columbia and the conspiracy claim was only brought against individuals. *Mpoy v. Fenty*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 90960 (D.D.C. July 2, 2012).

Sufficiency of evidence.

District of Columbia contended that, because the arrestee's notice letter did not specifically mention the claims of negligent supervision and negligent training, these claims failed for failure to comply with D.C. Code § 12-309; the arrestee's letter, however, stated that he might assert civil claims for assault, battery, false imprisonment, negligence and/or intentional infliction of emotional distress. The letter specifically listed negligence as a possible claim the arrestee would raise, and negligent supervision and negligent failure to train were both varieties of negligence that were reasonably likely to be alleged against the District arising out of the arrest by police officers as described in the arrestee's letter; though the letter did not specifically list negligent training or negligent supervision as potential causes of action, such precise exactness was not absolutely essential. *Maldonado v. District of Columbia*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 23503 (D.D.C. Feb. 21, 2013).

TITLE 13. PROCEDURE GENERALLY.

CHAPTER 4. CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA.

Subchapter II. Bases of Personal Jurisdiction over Persons Outside the District of Columbia.

§ 13-423. Personal jurisdiction based upon conduct.

Section references. — This section is referenced in § 48-804.02.

CASE NOTES

ANALYSIS

Due process, generally.
Establishing jurisdiction, generally.
Exceptions.
—Government contacts, exceptions.

Minimum contacts.

—In general.

Transacting business.

—Extent of jurisdiction, transacting business.

—Presence within District, transacting business.

Due process, generally.

Where the allegations did not demonstrate that one defendant directed any activity into the District of Columbia related to plaintiff's claims, plaintiff could not establish specific jurisdiction under the long-arm statute and the court did not need to reach the question of whether exercising jurisdiction over that defendant would comport with due process. *Mazza v. Verizon Wash. DC, Inc.*, 852 F. Supp. 2d 28, 2012 U.S. Dist. LEXIS 43314 (D.D.C. Mar. 29, 2012).

Establishing jurisdiction, generally.

Plaintiff couple established no basis for the exercise of personal jurisdiction over nonresident defendants under D.C. Code § 13-423(a), the District's long-arm statute because plaintiffs' complaint failed to allege facts with respect to the defendants' contacts with the District, whether by transacting business or contracting to supply services there; the complaint also failed to reveal any basis from which the court could conclude that plaintiffs suffered an injury there, whether by act or omission committed inside or outside of the District; and plaintiffs did not make a sufficient showing of the "unity of ownership and interest" that was necessary to attribute the jurisdictional contacts of District of Columbia-based resident defendants to the nonresident defendants. Absent any allegations to show the non-resident defendants' purposeful activities sufficient to invoke the benefits or protections of the District's laws, exercise of personal jurisdiction over the nonresident defendants did not comport with due process. *Clay v. Blue Hackle N. Am., LLC*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 170308 (D.D.C. Nov. 30, 2012).

Exceptions.**— Government contacts, exceptions.**

Neither defendant Tennessee Valley Authority's contacts with, nor its presence in the District of Columbia, nor its status as a federal agency gave the U.S. District Court for the District of Columbia personal jurisdiction over the TVA pursuant to the District's long-arm statute. Defendant had enough of the qualities of a private corporation to qualify for the governmental contacts exception to the exercise of personal jurisdiction for corporations that kept an office in the District of Columbia for the purpose of maintaining contact with Congress

and governmental agencies. *Sierra Club v. TVA*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 169209 (D.D.C. Nov. 29, 2012).

Minimum contacts.**— In general.**

U.S. District Court for the District of Columbia lacked personal jurisdiction over a vocational school which present and former students alleged provided an inadequate education, since the school's only contacts with the District were in the course of assisting students obtain federal financial aid and thus the government-contacts exception to personal jurisdiction was applicable. *Morgan v. Richmond Sch. of Health & Tech., Inc.*, 857 F. Supp. 2d 104, 2012 U.S. Dist. LEXIS 59683 (D.D.C. Apr. 30, 2012).

Transacting business.**— Extent of jurisdiction, transacting business.**

Former employee, a District of Columbia (DC) resident, failed to allege facts for the court to assert personal jurisdiction pursuant to D.C. Code § 13-423(a)(1) over New Jersey residents, directors of New York based (NY) employer, where activities including approval of a reduction in workforce, signing employee's termination letter, and one to three visits each to the NY office while employee worked there, fell squarely within the scope of defendants' employment, and did not involve either defendant doing business in a personal capacity in DC. *Caldwell v. Romero*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 27395 (D.D.C. Mar. 2, 2012), affirmed by 2013 U.S. App. LEXIS 11368 (D.C. Cir. June 5, 2013).

— Presence within District, transacting business.

Personal jurisdiction was shown in a copyright infringement suit regarding the use of certain photographs in D.C. restaurants because the defendant's provision of employees and other resources to these restaurants in D.C., along with the numerous visits by the defendant's officers and employees throughout the construction, development, and operational phases of those restaurants, amounted to the transacting of business in D.C. *Rundquist v. Vapiano Se*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 170035 (D.D.C. Nov. 9, 2012).

TITLE 14. PROOF.

Chapter

3. Competency of Witnesses.

CHAPTER 1. EVIDENCE GENERALLY; DEPOSITIONS.

§ 14-102. Impeachment of witnesses.

CASE NOTES

ANALYSIS

Confession.

Prior consistent statement.

Confession.

Though defendant's confession was obtained in violation of his rights under *Miranda* and *Edwards v. Arizona*, 451 U.S. 477 (1981), as the trial court found that contrition, not coercion, motivated him to confess, it properly deemed the confession voluntary; therefore, while the confession was inadmissible during the government's case-in-chief, it could be used to impeach defendant if he testified. *Dorsey v. United*

States, — A.3d —, 2013 D.C. App. LEXIS 3 (Jan. 3, 2013).

Prior consistent statement.

Trial court did not err in permitting a witness's rehabilitation with grand jury testimony, which included a prior consistent statement, because the prior consistent statement, made to police shortly after the shooting, was admissible to rebut a charge of a very recent and different reason to fabricate, and making the jury aware of the witness's motive allowed the jury to weight the statement accordingly. *Mason v. United States*, 53 A.3d 1084, 2012 D.C. App. LEXIS 498 (2012).

CHAPTER 3. COMPETENCY OF WITNESSES.

Sec.

14-307. Physicians and mental health professionals.

§ 14-307. Physicians and mental health professionals.

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon or mental health professional as defined by § 7-1201.01(11) or a domestic violence counselor as defined in § 14-310(a)(2), or a human trafficking counselor as defined in § 14-311(a)(2) may not be permitted, without the consent of the client, or of his legal representative, to disclose any information, confidential in its nature, that he has acquired in attending a client in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the client or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill

or injure a human being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or posttrial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person;

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court;

(4) evidence in a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 et seq.), or where a person is alleged to have defrauded a health care benefit program; or

(5) evidence in a criminal or delinquency proceeding where a person is charged with an impaired driving offense and where the person caused the death of or injury to a human being, and the disclosure is required in the interest of public justice.

(c) For the purposes of this section, the term:

(1) “Health care benefit program” means any public or private plan or contract under which a medical benefit, item, or service is or may be provided to an individual, and includes an individual or entity who provides a medical benefit, item, or service for which payment may be made under the plan or contract.

(2) “Injury” includes, in addition to physical damage to the body, a sexual act or sexual contact prohibited by Chapter 30 of Title 22.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 552, Pub. L. 91-358, title I, § 143(3); Mar. 3, 1979, D.C. Law 2-136, § 805(b), 25 DCR 5055; Mar. 16, 1985, D.C. Law 5-193, § 7, 32 DCR 1010; Mar. 25, 1986, D.C. Law 6-99, § 1101(a), 33 DCR 729; Apr. 30, 1988, D.C. Law 7-104, § 3, 35 DCR 147; Mar. 13, 2004, D.C. Law 15-105, § 99, 51 DCR 881; Mar. 2, 2007, D.C. Law 16-204, § 3(b), 53 DCR 9059; Apr. 24, 2007, D.C. Law 16-305, § 32, 53 DCR 6198; Dec. 10, 2009, D.C. Law 18-88, § 207, 56 DCR 7413; Oct. 23, 2010, D.C. Law 18-239, § 203(b), 57 DCR 5405; Apr. 27, 2013, D.C. Law 19-266, § 301, 59 DCR 12957.)

Section references. — This section is referenced in § 4-1321.02, § 4-1321.05, § 4-1371.12, § 7-1911, § 16-2359, § 16-2388, § 34-1802, and § 47-368.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 added (b)(5); and made related changes.

Legislative history of Law 19-266. — Law 19-266, the “Comprehensive Impaired Driving

and Alcohol Testing Program Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

CASE NOTES

ANALYSIS

Construction with other law.

Mental health records.

Mental health information, waiver of privilege.

Construction with other law.

Child custody statute, D.C. Code § 16-914, does not create an implied exception in custody cases to the privilege statute, D.C. Code § 14-307, which protects the confidentiality of mental health treatment information. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Mental health records.

In a custody case, the court may order the disclosure of a party's therapy records and other confidential mental health treatment information only if it finds: (1) that the information is necessary to the resolution of a disputed issue material to the safety of the child, a party's fitness as a parent, or a central aspect of the determination of the child's best interest; and (2) that other sources of information suffi-

cient to enable the court to protect the child and advance the child's best interest are unavailable. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

In custody litigation, the father's motion for leave to conduct discovery of the mother's confidential mental health treatment information was denied, as he did not establish that other sources of information concerning her mental health were unavailable, since she had agreed to submit to a mental examination by a psychologist. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Mental health information, waiver of privilege.

In a custody case where the father challenged the mother's mental health, by generally denying that her depression and anxiety compromised her fitness as a parent, the mother did not make an implied waiver of her D.C. Code § 14-307 privilege protecting the confidentiality of her mental health treatment information. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

CHAPTER 1. JUDGMENTS AND DECREES.

§ 15-108. Interest on judgment for liquidated debt.

CASE NOTES

Prejudgment interest.

In an action for attorney's fees pursuant to the Individuals with Disabilities Education Act, 20 U.S.C.S. § 1415(i)(3)(B)(i), principles of equity did not entitle the plaintiffs to prejudgment interest on their award because the defendant did not seek to deny the plaintiffs recovery of their attorney's fees, but instead disagreed as to the appropriate amount of compensation; invoices were paid promptly with certain adjustments based on the defendant's belief that the fees were unreasonable. *Garvin v. Gov't of the Dist. of Columbia*, 851 F. Supp. 2d 101, 2012 U.S. Dist. LEXIS 45720 (D.D.C. Mar. 30, 2012).

After finding a landlord liable to a real estate broker for unpaid commissions, the trial court properly refused to grant the broker prejudgment interest under D.C. Code § 15-108, be-

cause due to the necessity of litigation to settle the dispute over the amount of such commissions, the sum due the broker was indefinite, not liquidated, and thus outside the scope of § 15-108. *Steuart Inv. Co. v. Meyer Group*, — A.3d —, 2013 D.C. App. LEXIS 60 (Mar. 7, 2013).

After finding a landlord liable to a real estate broker for unpaid commissions, the trial court properly refused to grant the broker prejudgment interest under D.C. Code § 15-108, because the parties had no contractual agreement for the payment of interest, and the broker presented no evidence that in the real estate industry, interest would customarily be paid on a brokerage commission. *Steuart Inv. Co. v. Meyer Group*, — A.3d —, 2013 D.C. App. LEXIS 60 (Mar. 7, 2013).

TITLE 16. PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS.

Chapter

- 8. Criminal Record Sealing.
- 9. Divorce, Annulment, Separation, Support, Etc.
- 10. Proceedings Regarding Intrafamily Offenses.
- 23. Family Division [Family Court] Proceedings.
- 51. Jury Selection.

§ 16-705. Jury trial; trial by court.

CASE NOTES

ANALYSIS

Waiver of jury trial.

—Inquiry by judge, waiver of jury trial.

Waiver of jury trial.

— **Inquiry by judge, waiver of jury trial.**

Trial court committed plain error in failing to obtain a valid waiver of defendant's jury trial right under D.C. Code § 16-705(a) with respect

to a felon-in-possession charge, because it did not obtain a written or oral waiver from defendant before conducting a bench trial on the charge. The trial court's failure to seek an adequate waiver of defendant's right to a jury trial was structural error likely to have an effect on the fairness, integrity or public reputation of the judicial proceedings. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

CHAPTER 8. CRIMINAL RECORD SEALING.

Sec.

16-801. Definitions.

16-803. Sealing of public criminal records in other cases.

16-803.01. Sealing of arrest records of fugitives from justice.

Sec.

16-804. Motion to seal.

16-806. Availability of sealed records.

§ 16-801. Definitions.

For the purposes of this chapter, the term:

(1) "Clerk" means the Clerk of the Superior Court of the District of Columbia.

(2) "Completion of the sentence" means the person has been unconditionally discharged from incarceration, commitment, probation, parole, or supervised release, whichever is latest.

(3) "Conviction" means the judgment (sentence) on a verdict or a finding of guilty, a plea of guilty or a plea of nolo contendere, or a plea or verdict of not guilty by reason of insanity.

(4) "Court" or "Superior Court" means the Superior Court of the District of Columbia.

(5) "Disqualifying arrest or conviction" means:

(A) A conviction in any jurisdiction after the arrest or conviction for which the motion to seal has been filed;

(B) A pending criminal case in any jurisdiction;

(C) A conviction in the District of Columbia for an ineligible felony or ineligible misdemeanor or a conviction in any jurisdiction for an offense that involved conduct that would constitute an ineligible felony or ineligible misdemeanor if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct that is substantially similar to that of an ineligible felony or ineligible misdemeanor.

(6) "Eligible felony" means a failure to appear (§ 23-1327);

(7) "Eligible misdemeanor" means any misdemeanor that is not an ineligible misdemeanor.

(8) "Ineligible felony" means any felony other than a failure to appear (§ 16-1327) [§ 23-1327].

(9) "Ineligible misdemeanor" means:

(A) Interpersonal violence as defined in § 16-1001(6)(B), intimate partner violence as defined in § 16-1001(7), and intrafamily violence as defined in § 16-1001(9).

(B) Driving while intoxicated, driving under the influence, and operating while impaired (§ 50-2201.05);

(C) A misdemeanor offense for which sex offender registration is required pursuant to Chapter 40 of Title 22, whether or not the registration period has expired;

(D) Criminal abuse of a vulnerable adult (§ 22-936(a));

(E) Interfering with access to a medical facility (§ 22-1314.02);

(F) Possession of a pistol by a convicted felon (§ 22-4503(a)(2) [see now § 22-4503(a)(1)]);

(G) Failure to report child abuse (§ 4-1321.07);

(H) Refusal or neglect of guardian to provide for child under 14 years of age (§ 22-1102);

(I) Disorderly conduct (peeping tom) (§ 22-1321);

(J) Misdemeanor sexual abuse (§ 22-3006);

(K) Violating the Sex Offender Registration Act (§ 22-4015);

(L) Violating child labor laws (§§ 32-201 through 32-224);

(M) Election/Petition fraud (§ 1-1001.08);

(N) Public assistance fraud (§§ 4-218.01 through 4-218.05);

(O) Trademark counterfeiting (§ 22-902(b)(1));

(P) Attempted trademark counterfeiting (§§ 22-1803, 22-902);

(Q) Fraud in the second degree (§ 22-3222(b)(2));

(R) Attempted fraud (§§ 22-1803, 22-3222);

(S) Credit card fraud (§ 22-3223(d)(2));

(T) Attempted credit card fraud (§ 22-1803, 22-223) [§§ 22-1803, 22-3223];

(U) Misdemeanor insurance fraud (§ 22-3225.03a);

(V) Attempted insurance fraud (§§ 22-1803, 22-3225.02, 22-3225.03);

(W) Telephone fraud (§§ 22-3226.06, 22-3226.10(3));

(X) Attempted telephone fraud (§§ 22-1803, 22-3226.06, 22-3226.10);

(Y) Identity theft, second degree (§§ 22-3227.02, 22-3227.03(b));

(Z) Attempted identify theft (§§ 22-1803, 22-3227.02, 22-3227.03);

(AA) Fraudulent statements or failure to make statements to employee (§ 47-4104);

(BB) Fraudulent withholding information or failure to supply information to employer (§ 47-4105);

(CC) Fraud and false statements (§ 47-4106);

(DD) False statement/dealer certificate (§ 50-1501.04(a)(3));

(EE) False information/registration (§ 50-1501.04(a)(3));

(FF) No school bus driver's license (18 DCMR § 1305.1);

(GG) False statement on Department of Motor Vehicles document (18 DCMR § 1104.1);

(HH) No permit — 2nd or greater offense (§ 50-1401.01(d));

(II) Altered title (18 DCMR § 1104.3);

(JJ) Altered registration (18 DCMR § 1104.4);

(KK) No commercial driver's license (§ 50-405);

(LL) A violation of building and housing code regulations;

(MM) A violation of the Public Utility Commission regulations; and

(NN) Attempt or conspiracy to commit any of the foregoing offenses (§§ 22-1803, 22-1805a).

(10) "Minor offense" means a traffic offense, disorderly conduct, or an offense that is punishable by a fine only, excluding any ineligible misdemeanor.

(11) "Public" means any person, agency, organization, or entity other than:

(A) Any court;

(B) Any federal, state, or local prosecutor;

(C) Any law enforcement agency;

(D) Any licensing agency with respect to an offense that may disqualify a person from obtaining that license;

(E) Any licensed school, day care center, before or after school facility or other educational or child protection agency or facility;

(F) Any government employer or nominating or tenure commission with respect to:

(i) Employment of a judicial or quasi-judicial officer; or

(ii) Employment at a senior-level, executive-grade government position.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; Mar. 25, 2009, D.C. Law 17-368, § 4(e), 56 DCR 1338; Dec. 10, 2009, D.C. Law 18-88, § 401, 56 DCR 7413; June 15, 2013, D.C. Law 19-319, § 4(a), 60 DCR 2333.)

Section references. — This section is referenced in § 16-803, § 16-803.01, and § 16-806.

Effect of amendments.

The 2013 amendment by D.C. Law 19-319 rewrote (9)(A).

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment

Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

§ 16-803. Sealing of public criminal records in other cases.

(a)(1) A person arrested for, or charged with, the commission of an eligible Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and related court proceedings if:

(A) A waiting period of at least 2 years has elapsed since the termination of the case; and

(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.

(b)(1) A person arrested for, or charged with, the commission of any other offense pursuant to the District of Columbia Official Code of the District of Columbia Municipal Regulations whose prosecution has been terminated without conviction may file a motion to seal the publicly available records of the arrest and court proceedings if:

(A) A waiting period of at least 4 years has elapsed since the termination of the case or, if the case was terminated before charging by the prosecution, a waiting period of at least 3 years has elapsed since the termination of the case; and

(B) Except as permitted by paragraph (2) of this subsection, the movant does not have a disqualifying arrest or conviction.

(2)(A) If a period of at least 5 years has elapsed since the completion of the movant's sentence for a disqualifying misdemeanor conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying misdemeanor conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the

disqualifying misdemeanor conviction, except when the case terminated without a conviction as a result of the successful completion of a deferred sentencing agreement.

(B) If a period of at least 10 years has elapsed since the completion of the movant's sentence for a disqualifying felony conviction in the District of Columbia or for a conviction in any jurisdiction for an offense that involved conduct that would constitute a disqualifying felony conviction if committed in the District, the conviction shall not disqualify the movant from filing a motion to seal an arrest and related court proceedings under this subsection for a case that was terminated without conviction before or after the disqualifying felony conviction, except when the case terminated without conviction as the result of the successful completion of a deferred sentencing agreement.

(c) A person who has been convicted of an eligible misdemeanor or an eligible felony pursuant to the District of Columbia Official Code or the District of Columbia Municipal Regulations may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction if:

(1) A waiting period of at least 8 years has elapsed since the completion of the movant's sentence; and

(2) The movant does not have a disqualifying arrest or conviction.

(c-1) A person convicted of an offense that was decriminalized after the date of the conviction may file a motion to seal the publicly available records of the arrest, related court proceedings, and conviction.

(c-2) A person to whom a District of Columbia arrest has been attributed, who attests under oath that he or she was incorrectly identified or named, may file a motion to seal publicly available records of the arrest if the law enforcement agency did not take fingerprints at the time of the arrest and no other form of reliable identification was presented by the person who was arrested.

(d) The waiting periods in subsections (a), (b), and (c) of this section, before which a motion to seal cannot be filed, must be satisfied with respect to all of the movant's arrests and convictions unless the movant waives in writing the right to seek sealing of an arrest or conviction as to which the prescribed waiting period has not elapsed.

(e) The waiting periods in subsections (a), (b), and (c) of this section may be waived by the prosecutor in writing.

(f) In a motion filed under subsections (a), (b), or (c) of this section, the movant must seek to seal all eligible arrests and convictions in the same proceeding unless the movant waives in writing the right to seek sealing with respect to a particular conviction or arrest.

(g) In determining whether a movant is eligible to file a motion to seal because of a conviction, arrest, or pending charge, minor offenses shall not be considered.

(h)(1) The Superior Court shall grant a motion to seal if it is in the interests of justice to do so. In making this determination, the Court shall weigh:

(A) The interests of the movant in sealing the publicly available records of his or her arrest, related court proceedings, or conviction;

(B) The community's interest in retaining access to those records, including the interest of current or prospective employers in making fully

informed hiring or job assignment decisions and the interest in promoting public safety; and

(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability.

(2) In making this determination, the Court may consider:

- (A) The nature and circumstances of the offense at issue;
- (B) The movant's role in the offense or alleged offense and, in cases terminated without conviction, the weight of the evidence against the person;
- (C) The history and characteristics of the movant, including the movant's:

- (i) Character;
- (ii) Physical and mental condition;
- (iii) Employment history;
- (iv) Prior and subsequent conduct;
- (v) History relating to drug or alcohol abuse or dependence and treatment opportunities;

(vi) Criminal history; and

(vii) Efforts at rehabilitation;

(D) The number of the arrests or convictions that are the subject of the motion;

(E) The time that has elapsed since the arrests or convictions that are the subject of the motion;

(F) Whether the movant has previously obtained sealing or comparable relief under this section or any other provision of law other than by reason of actual innocence; and

(G) Any statement made by the victim of the offense.

(i)(1) In a motion filed under subsection (a) of this section, the burden shall be on the prosecutor to establish by a preponderance of the evidence that it is not in the interests of justice to grant relief.

(2) In a motion filed under subsection (b) of this section, the burden shall be on the movant to establish by a preponderance of the evidence that it is in the interests of justice to grant relief.

(3) In a motion filed under subsection (c) of this section, the burden shall be on the movant to establish by clear and convincing evidence that it is in the interests of justice to grant relief.

(j) A motion to seal made pursuant to this section may be dismissed without prejudice to permit the movant to renew the motion after further passage of time. The Court may set a waiting period before a renewed motion can be filed.

(k) A motion to seal made pursuant to this section may be dismissed if it appears that the movant has unreasonably delayed filing the motion and that the government has been prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the person could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(l) If the Court grants the motion to seal:

(1)(A) The Court shall order the prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency to remove from

their publicly available records all references that identify the movant as having been arrested, prosecuted, or convicted.

(B) The prosecutor's office and agencies shall be entitled to retain any and all records relating to the movant's arrest and conviction in a nonpublic file.

(C) The prosecutor, any law enforcement agency, and any pretrial, corrections, or community supervision agency office shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested, prosecuted, or convicted have been removed from its publicly available records.

(2)(A) The Court shall order the Clerk to remove or eliminate all publicly available Court records that identify the movant as having been arrested, prosecuted, or convicted.

(B) The Clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

(3)(A) In a case involving co-defendants in which the Court orders the movant's records sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be redacted.

(B) The Court need not order the redaction of references to the movant that appear in a transcript of court proceedings involving co-defendants.

(4) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(5) Unless otherwise ordered by the Court, the Clerk and any other agency shall reply in response to inquiries from the public concerning the existence of records which have been sealed pursuant to this chapter that no records are available.

(m) No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose except that the sealing of records under this provision does not relieve a person of the obligation to disclose the sealed arrest or conviction in response to any direct question asked in connection with jury service or in response to any direct question contained in any questionnaire or application for a position with any person, agency, organization, or entity defined in § 16-801(11).

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; Oct. 22, 2012, D.C. Law 19-183, § 3, 59 DCR 9429; June 15, 2013, D.C. Law 19-319, § 4(b), 60 DCR 2333.)

Section references. — This section is referenced in § 16-804 and § 16-806.

Effect of amendments.

The 2013 amendment by D.C. Law 19-319 rewrote (a) and (b); substituted "a waiting period of at least 8 years" for "a waiting period of

at least 10 years" in (c)(1); added (c-2); and added "In a motion filed under subsections (a), (b), or (c) of this section" in (f).

Legislative history of Law 19-319. — See note to § 16-801.

§ 16-803.01. Sealing of arrest records of fugitives from justice.

(a) A person arrested upon a warrant issued pursuant to § 23-701 or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued may file a motion to seal the record of the District of Columbia arrest and related Superior Court proceedings at any time after the person has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

(b)(1) The Superior Court shall grant a motion to seal if:

(A) The arrest was not made in connection with or did not result in Regulations charges or federal charges in the United States District Court for the District of Columbia against the person;

(B) The person waived an extradition hearing pursuant to § 23-702(f)(1) and was released pursuant to § 23-702(f)(2) or detained pursuant to § 23-702(f)(3); and

(C) The person proves by a preponderance of the evidence that he or she has appeared before the proper official in the jurisdiction from which he or she was a fugitive.

(2) In all other cases, the Superior Court may grant a motion to seal if it is in the interest of justice to do so. In making this determination, the court shall consider:

(A) The interests of the movant in sealing the publicly available records of his or her arrest and related court proceedings;

(B) The community's interest in retaining access to those records;

(C) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability; and

(D) Any other information it considers relevant.

(c) If the Court grants the motion to seal:

(1)(A) The Court shall order the prosecutor and any law enforcement agency to remove from their publicly available records all references that identify the movant as having been arrested.

(B) The prosecutor's office and law enforcement agencies shall be entitled to retain any and all records relating to the movant's arrest in a nonpublic file.

(C) The prosecutor's office and law enforcement agencies shall file a certification with the Court within 90 days that, to the best of its knowledge and belief, all references that identify the movant as having been arrested have been removed from its publicly available records.

(2)(A) The Court shall order the clerk to remove or eliminate all publicly available court records that identify the movant as having been arrested.

(B) The clerk shall be entitled to retain any and all records relating to the movant's arrest, related court proceedings, or conviction in a nonpublic file.

(3) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(4) Unless otherwise ordered by the Court, the clerk and any other agency shall reply in response to inquiries from the public concerning the existence of

records which have been sealed pursuant to this chapter that no records are available.

(5) No person as to whom relief pursuant to this section has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest as a fugitive from justice in response to any inquiry made of him or her for any purpose.

(6) For purposes of this section, the entities listed in § 16-801(11)(D)-(F) shall be considered public.

(June 15, 2013, D.C. Law 19-319, § 4(c), 60 DCR 2333.)

Section references. — This section is referenced in § 16-806.

Legislative history of Law 19-319. — See note to § 16-801.

§ 16-804. Motion to seal.

(a) A motion to seal filed with the Court pursuant to this chapter shall state grounds upon which eligibility for sealing is based and facts in support of the person's claim. It shall be accompanied by a statement of points and authorities in support of the motion, and any appropriate exhibits, affidavits, and supporting documents.

(b)(1) A motion pursuant to § 16-803(a), (b), or (c) shall state all of the movant's arrests and convictions and shall:

(A) Seek relief with respect to all the arrests and any conviction eligible for relief; and

(B) For any arrest or conviction as to which the waiting period in § 16-803(a), (b), or (c) has not elapsed, waive in writing the right to seek sealing of the records pertaining to that arrest or conviction.

(2) If the Court determines that the motion does not comply with the requirements of paragraph (1) of this subsection, then the movant shall have 30 days after being notified by the Court of the noncompliance to amend his or her original motion to include all of the movant's District of Columbia Code and Municipal Regulation arrests and convictions and either seek relief with respect to all the eligible arrests and convictions or waive in writing the right to seek sealing of the records pertaining to any arrests or convictions for which relief is not sought. If the movant fails to amend his original motion within 30 days, then the motion shall be dismissed without prejudice.

(c) A copy of the motion and any amended motion shall be served upon the prosecutor.

(d) The prosecutor shall not be required to respond to the motion unless ordered to do so by the Court pursuant to § 16-805(b).

(e) If the movant files a motion to seal an arrest that is not in the Court database or an arrest and related court proceedings that are not in a publicly available database, the motion to seal and responsive pleadings shall not be available publicly. If the Court grants such a motion, it shall order that the motion and responsive pleadings be sealed to the same extent and in the same manner as the records pertaining to the arrest and related court proceedings. If the Court denies such a motion, the Court, the United States Attorney's

Office, the Office of the Attorney General for the District of Columbia, and the law enforcement agency that arrested the movant shall be entitled to retain any and all records relating to the motion in a non-public file.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; June 15, 2013, D.C. Law 19-319, § 4(d), 60 DCR 2333.)

Effect of amendments. — The 2013 **Legislative history of Law 19-319.** — See amendment by D.C. Law 19-319 rewrote (b) note to § 16-801. and (c); and added (e).

§ 16-806. Availability of sealed records.

(a) Records sealed on grounds of actual innocence pursuant to § 16-802 shall be opened only on order of the Court upon a showing of compelling need; except, that upon request, the movant, or the authorized representative of the movant, shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under § 16-802 was granted and shall also be entitled to all certifications filed with the Court pursuant to § 16-802(h)(5). A request for access to sealed court records may be made ex parte.

(b) Records retained in a nonpublic file pursuant to §§ 16-803 or 16-803.01 shall be available:

(1) To any court, prosecutor, or law enforcement agency for any lawful purpose, including:

(A) The investigation or prosecution of any offense;

(B) The determination of whether a person is eligible to have an arrest or conviction sealed or expunged;

(C) The determination of conditions of release for a subsequent arrest;

(D) The determination of whether a person has committed a second or subsequent offense for charging or sentencing purposes;

(E) Determining an appropriate sentence if the person is subsequently convicted of another crime; and

(F) Employment decisions.

(2) For use in civil litigation relating to the arrest or conviction;

(3) Upon order of the Court for good cause shown;

(4) Except for records sealed under § 16-803.01, to any person or entity identified in § 16-801(11)(D), (E), or (F), but only to the extent that such records would have been available to such persons or entities before relief under § 16-803 was granted. Such records may be used for any lawful purpose, including:

(A) The determination of whether a person is eligible to be licensed in a particular trade or profession; and

(B) Employment decisions; and

(5) To the movant or the authorized representative of the movant, upon request, but only to the extent that such records would have been available to the movant before relief under § 16-803 or 16-803.01 was granted. The movant, or the authorized representative of the movant, shall also be entitled to all certifications filed with the Court pursuant to § 16-803(1)(1)(C).

(c) Any person, upon making inquiry of the Court concerning the existence of records of arrest, court proceedings, or convictions involving an individual, shall be entitled to rely, for any purpose under the law, upon the clerk's response that no records are available under § 16-802(h)(7) or § 16-803(l)(5) with respect to any issue about that person's knowledge of the individual's record.

(d) Except to the extent permitted by this section, all sealed records shall remain sealed.

(May 5, 2007, D.C. Law 16-307, § 2(b), 54 DCR 868; June 15, 2013, D.C. Law 19-319, § 4(e), 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 rewrote (a); substituted “§§ 16-803 or 16-803.01” for “§ 16-803” in the introductory language of (b); added “Except for records sealed under § 16-803.01”

at the beginning of (b)(4); rewrote ((b)(5); added (d); and made related changes.

Legislative history of Law 19-319. — See note to § 16-801.

CHAPTER 9. DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.

16-914. Custody of children.

§ 16-914. Custody of children.

(a)(1)(A) In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, sexual orientation, or gender identity or expression of a party, in and of itself, shall not be a conclusive consideration. The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:

- (i) sole legal custody;
- (ii) sole physical custody;
- (iii) joint legal custody;
- (iv) joint physical custody; or

(v) any other custody arrangement the Court may determine is in the best interest of the child.

(B) For the purposes of this paragraph, the term:

(i) “Legal custody” means legal responsibility for a child. The term “legal custody” includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(ii) “Physical custody” means a child's living arrangements. The term “physical custody” includes a child's residency or visitation schedule.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the

sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred.

(3) In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;
- (D) the child's adjustment to his or her home, school, and community;
- (E) the mental and physical health of all individuals involved;
- (F) evidence of an intrafamily offense as defined in section 16-1001(5) [now § 16-1001(8)];
- (G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;
- (H) the willingness of the parents to share custody;
- (I) the prior involvement of each parent in the child's life;
- (J) the potential disruption of the child's social and school life;
- (K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;
- (L) the demands of parental employment;
- (M) the age and number of children;
- (N) the sincerity of each parent's request;
- (O) the parent's ability to financially support a joint custody arrangement;

(P) the impact on Temporary Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and

(Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) Repealed.

(a-3)(1) A minor parent, or the parent, guardian, or other legal representative of a minor parent on the minor parent's behalf, may initiate a custody proceeding under this chapter.

(2) For the purposes of this subsection, the term "minor" means a person under 18 years of age.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party.

(c) In any custody proceeding under this chapter, the Court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

(1) the residence of the child or children;

(2) the financial support based on the needs of the child and the actual resources of the parent;

(3) visitation;

(4) holidays, birthdays, and vacation visitation;

(5) transportation of the child between the residences;

(6) education;

(7) religious training, if any;

(8) access to the child's educational, medical, psychiatric, and dental treatment records;

(9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;

(10) communication between the child and the parents; and

(11) the resolution of conflict, such as a recognized family counseling or mediation service, before application to the Court to resolve a conflict.

(d) In making its custody determination, the Court:

(1) shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a)(3) of this section in fashioning a custody order;

(2) shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention; and

(3) may order either or both parents to attend parenting classes.

(e) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in § 16-916.01.

(f)(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.

(2) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(3) The provisions of this chapter shall apply to motions to modify or terminate any award of custody filed after April 18, 1996.

(g) The Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests.

(h) The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.

(i) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the Court determines is in the best interest of the minor child.

(j) The Court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

(k) Notwithstanding any other provision of this section, no person shall be granted legal custody or physical custody of, or visitation with, a child if the person has been convicted of first degree sexual abuse, second degree sexual abuse, or child sexual abuse, and the child was conceived as a result of that violation. Nothing in this subsection shall be construed as abrogating or limiting the responsibility of a person described herein to pay child support.

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, § 2(b), 43 DCR 574; Apr. 20, 1999, D.C. Law 12-241, § 11, 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 142(b), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-207, § 2(i), 49 DCR 7827; June 25, 2008, D.C. Law 17-177, § 10(b), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-368, § 3(a), 56; June 19, 2013, D.C. Law 19-320, § 509, 60 DCR 3390.)

Section references. — This section is referenced in § 16-831.03 and § 16-911.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 added (k).

Legislative history of Law 19-320. — Law

19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act

No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CASE NOTES

ANALYSIS

Construction with other law.
Doctor-patient privilege.

Construction with other law.

Child custody statute, D.C. Code § 16-914, does not create an implied exception in custody cases to the privilege statute, D.C. Code § 14-307, which protects the confidentiality of mental health treatment information. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Doctor-patient privilege.

In a custody case, the court may order the disclosure of a party's therapy records and other confidential mental health treatment information only if it finds: (1) that the information is necessary to the resolution of a disputed issue material to the safety of the child, a party's fitness as a parent, or a central aspect of the determination of the child's best interest; and (2) that other sources of information sufficient to enable the court to protect the child and

advance the child's best interest are unavailable. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

In custody litigation, the father's motion for leave to conduct discovery of the mother's confidential mental health treatment information was denied, as he did not establish that other sources of information concerning her mental health were unavailable, since she had agreed to submit to a mental examination by a psychologist. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

In a custody case where the father challenged the mother's mental health, by generally denying that her depression and anxiety compromised her fitness as a parent, the mother did not make an implied waiver of her D.C. Code § 14-307 privilege protecting the confidentiality of her mental health treatment information. *Adler v. Adler*, 2012 D.C. Super. LEXIS 10 (Dec. 11, 2012).

Applied in *In re D.S.*, 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012).

CHAPTER 10. PROCEEDINGS REGARDING INTRAFAMILY OFFENSES.

Subchapter I. Intrafamily Proceedings Generally

Subchapter II. Parental Kidnapping

Sec.

16-1005. Hearing; evidence; protection order.

Sec.

16-1024. Penalties.

Subchapter I. Intrafamily Proceedings Generally.

§ 16-1005. Hearing; evidence; protection order.

(a) Individuals served with notice in accordance with § 16-1004 shall appear at the hearing.

(a-1)(1) In a case where the Attorney General files the petition on behalf of a petitioner pursuant to § 16-1003(c), the petitioner is not a required party.

(2) In a case where a parent, guardian, custodian, or other appropriate adult files a petition on behalf of a minor petitioner under the age of 12, the minor petitioner is not a required party.

(3) In a hearing under this section, if a parent, guardian, custodian, or other appropriate adult has petitioned for civil protection on behalf of a minor petitioner 12 years of age or older, the court shall consider the expressed wishes of the minor petitioner in deciding whether to issue an order pursuant to this section and in determining the contents of such an order.

(4) If a respondent is a minor, or if the petitioner is a minor and at least 12 years of age, and if the minor is not accompanied by a parent, guardian, custodian, other appropriate adult, or represented by an attorney, the court may appoint an attorney to represent the minor if such an appointment would not unduly delay the issuance or denial of a protection order. The court may promulgate rules for the appointment of attorneys.

(b) Notwithstanding section 14-306, in a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but testimony compelled over a claim of a privilege conferred by such section shall be inadmissible in evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(c) If, after hearing, the judicial officer finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner or against petitioner's animal or an animal in petitioner's household, the judicial officer may issue a protection order that:

(1) Directs the respondent to refrain from committing or threatening to commit criminal offenses against the petitioner and other protected persons;

(2) Requires the respondent to stay away from or have no contact with the petitioner and any other protected persons or locations;

(3) Requires the respondent to participate in psychiatric or medical treatment or appropriate counseling programs;

(4) Directs the respondent to refrain from entering, or to vacate, the dwelling unit of the petitioner when the dwelling is:

(A) Marital property of the parties;

(B) Jointly owned, leased, or rented and occupied by both parties; provided, that joint occupancy shall not be required if the respondent's actions caused the petitioner to relinquish occupancy;

(C) Owned, leased, or rented by the petitioner individually; or

(D) Jointly owned, leased, or rented by the petitioner and a person other than the respondent;

(5) Directs the respondent to relinquish possession or use of certain personal property owned jointly by the parties or by the petitioner individually;

(6) Awards temporary custody of a minor child or children of the parties;

(7) Provides for visitation rights with appropriate restrictions to protect the safety of the petitioner;

(8) Awards costs and attorney fees;

(9) Orders the Metropolitan Police Department to take such action as the judicial officer deems necessary to enforce its orders;

(10) Directs the respondent to relinquish possession of any firearms;

(10A) Directs the care, custody, or control of a domestic animal that belongs to petitioner or respondent or lives in his or her household;

(11) Directs the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or

(12) Combines 2 or more of the preceding provisions.

(c-1) For the purposes of subsection (c)(6) and (7) of this section, if the judicial officer finds by a preponderance of evidence that a contestant for

custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(d) A protection order issued pursuant to this section shall be effective for such period up to one year as the judicial officer may specify, but the judicial officer may, upon motion of any party to the original proceeding, extend, rescind, or modify the order for good cause shown.

(e) Any final order issued pursuant to this section and any order granting or denying extension, modification, or rescission of such order shall be appealable.

(f) Violation of any temporary or final order issued under this subchapter, or violation in the District of Columbia of any valid foreign protection order, as that term is defined in subchapter IV of this chapter, or respondent's failure to appear as required by subsection (a) of this section, shall be punishable as contempt. Upon conviction, criminal contempt shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than 180 days, or both.

(g) Any person who violates any protection order issued under this subchapter, or any person who violates in the District of Columbia any valid foreign protection order, as that term is defined in subchapter IV of this chapter, shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 180 days, or both.

(g-1) Enforcement proceedings under subsections (f) and (g) of this section in which the respondent is a child as defined by § 16-2301(3) shall be governed by subchapter I of Chapter 23 of this title.

(h) For purposes of establishing a violation under subsections (f) and (g) of this section, an oral or written statement made by a person located outside the District of Columbia to a person located in the District of Columbia by means of telecommunication, mail, or any other method of communication shall be deemed to be made in the District of Columbia.

(i) Orders entered with the consent of the respondent but without an admission that the conduct occurred shall be punishable under subsection (f), (g), or (g-1) of this section.

(July 29, 1970, 84 Stat. 547, Pub. L. 91-358, title I, § 131(a); Sept. 14, 1982, D.C. Law 4-144, § 6, 29 DCR 3131; Aug. 25, 1994, D.C. Law 10-154, § 2(c), 41 DCR 4870; Mar. 21, 1995, D.C. Law 10-237, § 2(b), 42 DCR 36; Mar. 24, 1998, D.C. Law 12-81, § 10(k), 45 DCR 745; Apr. 11, 2003, D.C. Law 14-296, § 2(b), 50 DCR 320; Mar. 13, 2004, D.C. Law 15-105, §§ 10(a), 54(b), 51 DCR 881; Dec.

5, 2008, D.C. Law 17-281, § 107(b), 55 DCR 9186; Mar. 25, 2009, D.C. Law 17-368, § 3(b)(3), 56 DCR 1338; June 3, 2011, D.C. Law 18-377, § 5, 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 281(a), 60 DCR 2064.)

Section references. — This section is referenced in § 2-1402.21, § 5-127.04, § 7-2502.03, § 16-1003, § 16-1004, § 16-1042, § 42-3505.07, and § 42-3505.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (f) and (g).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Parental Kidnapping.

§ 16-1024. Penalties.

(a) A person who violates any provision of § 16-1022 and who takes the child to a place within the District, or detains or conceals the child within the District of Columbia is guilty of a misdemeanor and on conviction is subject to fine not exceeding \$250 or performance of community service not exceeding 240 hours, or both.

(b) A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:

(1) If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not more than the amount set forth in [§ 22-3571.01] or imprisonment for 6 months, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$250, or performance of community service not exceeding 240 hours, or imprisonment not exceeding 30 days, or a combination of all three.

(2) If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for 1 year, or both, except that if the person releases the child without injury in a safe place prior to arrest, the person is guilty of a misdemeanor and, on conviction, is subject to a fine not more than the amount set forth in [§ 22-3571.01] or imprisonment not exceeding 60 days, or both.

(May 23, 1986, D.C. Law 6-115, § 5, 33 DCR 2424; May 10, 1989, D.C. Law 7-231, § 25(e), 36 DCR 492; June 11, 2013, D.C. Law 19-317, § 281(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-563.

Effect of amendments. — The 2013

amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (b)(1);

and in (b)(2), substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$5,000”, and substituted “not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$500”.

Legislative history of Law 19-317. — See note to § 16-1005.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13. EMINENT DOMAIN.

Subchapter II. Real Property for District of Columbia.

§ 16-1311. Condemnation proceedings by District of Columbia.

Section references. — This section is referenced in § 2-1225.41, § 6-203, § 9-1203.06, § 10-1601.02, and § 42-3171.02.

CASE NOTES

ANALYSIS

Compensation.
Unity of use.

Compensation.

If a reasonably foreseeable integrated use has a present effect on market value then it should be compensable as a component of just compensation under the Takings Clause, U.S. Const. amend. V, and the District’s condemnation statute, D.C. Code § 16-1311; when the government impairs that reasonably foreseeable integrated use by taking some of the property, the property remaining declines in value, and the owner, under the constitutional guarantee of just compensation, should be compensated for that injury. If the condemnee can demonstrate that the severing of unity causes economic damage in the marketplace to the remaining parcels, damages will be awarded. *Greene v. D.C.*, 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

Unity of use.

In an eminent domain case under D.C. Code § 16-1311, the trial court properly refused to present the issue of severance damages to the jury since no reasonable juror could have found a unity of use since a hypothetical plan created by the owner for litigation, and expert testimony valuing the land based on that plan, did

not prove a reasonably foreseeable unity of use any more than the owner’s objective to develop her land as an assemblage, and the parcels were not mutually dependent. *Greene v. D.C.*, 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

Appellate court adopts the majority rule that the issue of unity of use for just compensation purposes is necessarily a question of fact for the jury or designated trier of fact, unless reasonable minds could not differ on the issue for the District of Columbia; while there is some contrary federal authority under Fed. R. Civ. P. 71.1(h) holding that unity of use should always be determined by the trial court, the District of Columbia rules contain no corresponding provision and D.C. Super. Ct. R. Civ. P. 71A(h) simply directs that the trial shall be conducted pursuant to the applicable statutes. D.C. Code § 16-1317 provides in turn that the jury shall hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding and shall return to the court, in writing, their appraisal of the value of the interests of all persons, respectively, in the real property. *Greene v. D.C.*, 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

§ 16-1317. Objections to jurors; appraisement.

Section references. — This section is referenced in § 16-1318 and § 16-1319.

CASE NOTES

Unity of use.

Appellate court adopts the majority rule that the issue of unity of use for just compensation purposes is necessarily a question of fact for the jury or designated trier of fact, unless reasonable minds could not differ on the issue for the District of Columbia; while there is some contrary federal authority under Fed. R. Civ. P. 71.1(h) holding that unity of use should always be determined by the trial court, the District of Columbia rules contain no corresponding provision and D.C. Super. Ct. R. Civ. P. 71A(h) simply directs that the trial shall be conducted

pursuant to the applicable statutes. D.C. Code § 16-1317 provides in turn that the jury shall hear and receive any evidence offered or submitted on behalf of the District of Columbia and by any person having an interest in the proceeding and shall return to the court, in writing, their appraisement of the value of the interests of all persons, respectively, in the real property. *Greene v. D.C.*, 56 A.3d 1170, 2012 D.C. App. LEXIS 620 (2012), writ of certiorari denied by 133 S. Ct. 2404, 185 L. Ed. 2d 1106, 2013 U.S. LEXIS 3873, 81 U.S.L.W. 3648 (U.S. 2013).

CHAPTER 23. FAMILY DIVISION [FAMILY COURT] PROCEEDINGS.

Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision

Sec.

16-2336. Unlawful disclosure of records; penalties.

Subchapter II. Parentage Proceedings

16-2348. Parentage records; confidentiality; inspection and disclosure.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children

Sec.

16-2364. Unlawful disclosure.

Subchapter V. Permanent Guardianship

16-2394. Unlawful disclosure.

Subchapter I. Proceedings Regarding Delinquency, Neglect, or Need of Supervision.

§ 16-2301. Definitions.

Section references. — This section is referenced in § 2-1515.01, § 4-203.01, § 4-1301.02, § 4-1301.06, § 4-1321.02, § 4-

1345.01, § 11-721, § 11-1101, § 16-1001, § 16-1005, § 16-2304, § 16-2315, § 16-2316, § 16-2320, § 16-2352, § 16-2382, and § 38-2561.03.

CASE NOTES

ANALYSIS

Education requirement.
Sufficiency of evidence.

Education requirement.

Court was not plainly wrong in finding that the oldest child was without education as required by law when he missed so many school days that he was in danger of failing due to absenteeism and when he remained unenrolled

in school one month after moving back to the District. Because the focus of the court's inquiry was the child's condition and not the parent's fault, there was no error in the trial court's not crediting the mother's excuses for the child's lack of school attendance and enrollment. *In re P.B.*, 54 A.3d 660, 2012 D.C. App. LEXIS 513 (2012).

Sufficiency of evidence.

Evidence was sufficient to support a finding

of neglect, where it showed that the father physically and sexually abused the child, the child was regularly exposed to illegal drug activity in the father's home, the child slept on a sheet in a closet, and the child was found awake at 3:00 a.m. with music blaring in the father's home. In re M.F., 55 A.3d 373, 2012 D.C. App. LEXIS 482 (2012).

Court was not plainly wrong in finding that

all three children were without the proper parental care or control necessary for their physical, mental, or emotional health or that the mother suffered from a mental incapacity and that there existed a nexus between her incapacity and an inability to properly care for her children where there was expert testimony and years of evidence. In re P.B., 54 A.3d 660, 2012 D.C. App. LEXIS 513 (2012).

§ 16-2310. Criteria for detaining children.

Section references. — This section is referenced in § 16-2311, § 16-2312, and § 16-2315.

CASE NOTES

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012).

§ 16-2312. Detention or shelter care hearing; intermediate disposition.

Section references. — This section is referenced in § 2-1515.01, § 7-2101, § 16-2305, § 16-2308, § 16-2310, § 16-2312a, and § 16-2328.

CASE NOTES

Applied in In re D.S., 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012).

§ 16-2317. Hearings, findings; dismissal.

Section references. — This section is referenced in § 2-1515.01, § 7-2101, § 16-2319, § 16-2320, § 16-2383, and § 16-2399.

CASE NOTES

Standard of proof.

Absent a showing that a father failed to meet the threshold criteria for custody, the government had to prove by clear and convincing evidence that awarding him custody would be contrary to the children's best interest; the trial

court is required to apply the clear-and-convincing-evidence standard before rejecting the custodial preference of a father who has grasped his opportunity interest and is found to be a fit parent. In re D.S., — A.3d —, 2013 D.C. App. LEXIS 45 (Feb. 21, 2013).

§ 16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.

Section references. — This section is referenced in § 2-1515.05, § 4-342, § 4-1301.09, § 4-1303.05, § 4-1305.02, § 4-1305.06, § 4-1305.08, § 4-1424, § 7-1231.14, § 16-2304, § 16-2319, § 16-2323, § 16-2327, § 16-2331, and § 16-2332.

CASE NOTES

Presumptions and burden of proof.

After the abuse by the unwed biological parent with whom the children were residing led first to their removal from that parent's home, then to the parent's stipulation that the children were neglected, and ultimately to their commitment to the District of Columbia Child and Family Services Agency (CFSA) over the other parent's objections and without any finding that the other parent, who did not live with

the first parent, was an unfit parent, the trial court's determination that it was in the children's best interest to be committed to the CFSA for up to two years failed sufficiently to take into account the presumption in the neglect statute, D.C. Code § 16-2320(a), that it was generally preferable to leave a child in the child's own home. *In re D.S.*, 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012).

§ 16-2336. Unlawful disclosure of records; penalties.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of sections 16-2331 through 16-2335, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined of not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(July 29, 1970, 84 Stat. 543, Pub. L. 91-358, title I, § 121(a); Sept. 23, 1977, D.C. Law 2-22, title IV, § 408(a), 24 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 4(q), 35 DCR 147; June 11, 2013, D.C. Law 19-317, § 281(c), 60 DCR 2064.)

Section references. — This section is referenced in § 16-2316, § 16-2331, and § 16-2332.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "not more than \$250".

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Parentage Proceedings.

§ 16-2348. Parentage records; confidentiality; inspection and disclosure.

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11-1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, the IV-D agency, or authorized professional staff of the Superior Court. Any inspection shall be subject to the safeguards provided by section 16-925. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the other parent, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon request, to the IV-D agency and the Corporation Counsel for use as

evidence in nonsupport proceedings and to the Registrar as provided by section 16-2346(a).

(b) No person shall disclose, receive, or use records in violation of this section. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia.

(Dec. 23, 1963, 77 Stat. 592, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 545, Pub. L. 91-358, title I, § 121(a); Oct. 1, 1976, D.C. Law 1-87, § 20(g), 23 DCR 2544; Oct. 8, 1981, D.C. Law 4-34, § 29(a), 28 DCR 3271; Apr. 30, 1988, D.C. Law 7-104, § 4(s), 35 DCR 147; Apr. 3, 2001, D.C. Law 13-269, § 106(r), 48 DCR 1270; June 11, 2013, D.C. Law 19-317, § 281(d), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$250” in (b).

Legislative history of Law 19-317. — See note to § 16-2336.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Proceedings Regarding the Termination of Parental Rights of Certain Neglected Children.

§ 16-2353. Grounds for termination of parent and child relationship.

CASE NOTES

Applied in *In re D.S.*, 52 A.3d 887, 2012 D.C. App. LEXIS 481 (2012).

§ 16-2364. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2363 of this subchapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than ninety (90) days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Sept. 23, 1977, D.C. Law 2-22, title IV, § 410, 24 DCR 3341; June 11, 2013, D.C. Law 19-317, § 281(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than two hundred and

§ 16-2394 PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

fifty dollars (\$250)".

Legislative history of Law 19-317. — See note to § 16-2336.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter V. Permanent Guardianship.

§ 16-2394. Unlawful disclosure.

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of section 16-2393 shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 90 days, or both. A violation of this section shall be prosecuted by the Corporation Counsel of the District of Columbia.

(Apr. 4, 2001, D.C. Law 13-273, § 3(b), 48 DCR 1637; June 11, 2013, D.C. Law 19-317, § 281(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than \$250".

Legislative history of Law 19-317. — See note to § 16-2336.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 44. ARBITRATION; REVISED UNIFORM ACT.

§ 16-4423. Vacating award.

Section references. — This section is referenced in § 16-4404, § 16-4412, § 16-4414, § 16-4418, § 16-4420, § 16-4421, § 16-4422, § 16-4424, and § 16-4425.

CASE NOTES

Applied in *Adkins L.P. v. O St. Mgmt., LLC*, 56 A.3d 1159, 2012 D.C. App. LEXIS 505 (2012), writ of certiorari denied by 133 S. Ct. 2752, 186 L. Ed. 2d 194, 2013 U.S. LEXIS 4016, 81 U.S.L.W. 3658 (U.S. 2013).

CHAPTER 51. JURY SELECTION.

Sec.
16-5103. Penalties.

§ 16-5103. Penalties.

Any violation of § 16-1502 shall be a misdemeanor punishable by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment of up to 180 days, or both.

(Mar. 14, 2007, D.C. Law 16-272, § 3(b), 54 DCR 856; June 11, 2013, D.C. Law 19-317, § 281(g), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “up to \$500”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 17-306. Determination of appeals.

CASE NOTES

Remand.

Inmate’s motion to vacate his conviction under D.C. Code § 23-110 was remanded for an evidentiary hearing under D.C. Code § 17-306 on the prejudice prong of his ineffective assistance claim as the issue of whether the inmate

showed a reasonable probability of a different outcome had counsel properly advised him of a plea offer since the plea offer was wired was not raised until after the evidentiary record was closed. *Benitez v. United States*, 60 A.3d 1230, 2013 D.C. App. LEXIS 47 (2013).

DIVISION III. DECEDENTS' ESTATES AND FIDUCIARY RELATIONS.

TITLE 18. WILLS.

Chapter

1. General Provisions.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

§ 18-112. Taking and carrying away, or destroying, mutilating, or secreting will.

Whoever, during the life or after the death of the testator, for a fraudulent purpose, takes and carries away, or destroys, mutilates, or secretes, a testamentary instrument, shall be imprisoned not more than five years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in [§ 22-3571.01].

(Sept. 14, 1965, 79 Stat. 687, Pub. L. 89-183, § 1; June 11, 2013, D.C. Law 19-317, § 301, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

TITLE 20. PROBATE AND ADMINISTRATION OF DECEDENTS' ESTATES.

Chapter

1. General Provisions.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

20-102. Verification.

§ 20-102. Verification.

(a) When a writing is required by this title to be verified, verification shall be sufficient if the writing is signed by the person required to make the verification and contains the following representation:

“I do solemnly declare and affirm under penalty of law that the contents of the foregoing document are true and correct to the best of my knowledge, information, and belief.”

(b) Any person who in making a verification under this section willfully and contrary to the verification states any material matter that such person does not believe to be true shall be guilty of an offense. Any person convicted of this offense shall be punished by imprisonment for not less than 2 or more than 10 years.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in [§ 22-3571.01].

(June 24, 1980, D.C. Law 3-72, § 101, 27 DCR 2155; June 11, 2013, D.C. Law 19-317, § 302, 60 DCR 2064.)

Section references. — This section is referenced in § 20-905.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

TITLE 21. FIDUCIARY RELATIONS AND PERSONS WITH MENTAL ILLNESS.

Chapter

5. Hospitalization of Persons with Mental Illness.

CHAPTER 5. HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS.

Subchapter VI. Miscellaneous Provisions

Sec.

21-591. Offenses and penalties.

Subchapter VI. Miscellaneous Provisions.

§ 21-591. Offenses and penalties.

Whoever:

(1) without probable cause for believing a person to be mentally ill:

(A) causes or conspires with or assists another person to cause the hospitalization, under this chapter, of the person first referred to; or

(B) executes a petition, application, or certificate pursuant to this chapter, by which he secures or attempts to secure the apprehension, hospitalization, detention, or restraint of the person first referred to;

or

(2) causes or conspires with or assists another person to cause the denial to a person of a right accorded to him by this chapter;

or

(3) being a physician, psychiatrist or qualified psychologist, knowingly makes a false certificate or application pursuant to this chapter as to the mental condition of a person —

shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than three years, or both.

(Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1; Feb. 24, 1984, D.C. Law 5-48, § 11(a)(20), 30 DCR 5778; June 11, 2013, D.C. Law 19-317, § 282, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in the last line.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

DIVISION IV. CRIMINAL LAW AND PROCEDURE AND PRISONERS.

TITLE 22. CRIMINAL OFFENSES AND PENALTIES.

SUBTITLE I. CRIMINAL OFFENSES.

Chapter

3. Arson.
4. Assault; Mayhem; Threats.
5. Bigamy.
6. Breaking into Devices Designed to Receive Currency.
7. Bribery; Obstructing Justice; Corrupt Influence.
8. Burglary.
- 8A. Crimes Committed Against Minors.
- 8B. Crimes Against Public Officials.
9. Commercial Counterfeiting.
- 9A. Criminal Abuse and Neglect of Vulnerable Adults.
- 9B. Criminal Street Gangs.
10. Cruelty to Animals.
11. Cruelty to Children.
- 12A. Detection Device Tampering.
13. Disturbances of the Public Peace.
- 13A. Entry into a Motor Vehicle, Unlawful.
14. False Pretenses; False Personation.
15. Forgery; Frauds.
17. Gambling.
18. General Offenses.
- 18A. Human Trafficking.
19. Incest.
- 19A. Interfering with Reports of Crime.
20. Kidnapping.
21. Murder; Manslaughter.
22. Obscenity.
23. Panhandling.
24. Perjury; Related Offenses.
25. Possession of Implements of Crime.
- 25A. Presence in a Motor Vehicle Containing a Firearm.
26. Prison Misconduct.
27. Prostitution; Pandering.
- 27A. Protest Targeting a Residence.
28. Robbery.
30. Sexual Abuse.
31. Sexual Performance Using Minors.
- 31A. Stalking.

Chapter

31B. Terrorism.

32. Theft; Fraud; Stolen Property; Forgery; and Extortion.

33. Trespass; Injuries to Property.

34. Use of “District of Columbia” by Certain Persons.

35A. Voyeurism.

35B. Fines for Criminal Offenses.

SUBTITLE III. SEX OFFENDERS.

40. Sex Offender Registration.

SUBTITLE III-A. DNA TESTING.

41A. DNA Testing and Post-Conviction Relief for Innocent Persons.

SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF
CRIMES.

42A. Criminal Justice Coordinating Council.

SUBTITLE V. HARBOR, GAME AND FISH LAWS.

43. Game and Fish Laws.

44. Harbor Regulations.

SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

45. Weapons and Possession of Weapons.

SUBTITLE I. CRIMINAL OFFENSES.

CHAPTER 1. ABORTION.

§ 22-101. Definition and penalty. [Repealed].

Editor’s notes. — Section 209(a) of D.C.
Law 19-317 purported to amend this section,
but it had previously been repealed.

CHAPTER 3. ARSON.

Sec.

22-301. Definition and penalty.

22-302. Burning one's own property with intent to defraud or injure another.

Sec.

22-303. Malicious burning, destruction, or injury of another's property.

§ 22-301. Definition and penalty.

Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other watercraft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than 1 year nor more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 820; June 11, 2013, D.C. Law 19-317, § 303(j), 60 DCR 2064.)

Section references. — This section is referenced in § 22-2101, § 22-3152, § 23-546, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-302. Burning one's own property with intent to defraud or injure another.

Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other watercraft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 821; June 11, 2013, D.C. Law 19-317, § 303(k), 60 DCR 2064.)

Section references. — This section is referenced in § 22-2101, § 23-546, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last

sentence.

Legislative history of Law 19-317. — See note to § 22-301.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-303. Malicious burning, destruction, or injury of another's property.

Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$1,000 or more, shall be fined not more than the amount set forth in § 22-3571.01 or shall be imprisoned for not more than 10 years, or both, and if the property has some value shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 848; Aug. 12, 1937, 50 Stat. 629, ch. 599; Nov. 8, 1965, 79 Stat. 1307, Pub. L. 89-347, § 1; May 21, 1994, D.C. Law 10-119, § 2(e), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(c), 41 DCR 2608; June 3, 2011, D.C. Law 18-377, § 7, 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 201(k), 60 DCR 2064.)

Section references. — This section is referenced in § 22-951, § 22-3152, § 23-546, and § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” and the second occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 4. ASSAULT; MAYHEM; THREATS.

Sec.

- 22-401. Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse.
- 22-402. Assault with intent to commit mayhem or with dangerous weapon.
- 22-403. Assault with intent to commit any other offense.
- 22-404. Assault or threatened assault in a menacing manner; stalking.

Sec.

- 22-404.01. Aggravated assault.
- 22-404.02. Assault on a public vehicle inspection officer.
- 22-404.03. Aggravated assault on a public vehicle inspection officer.
- 22-405. Assault on member of police force, campus or university special police, or fire department.
- 22-406. Mayhem or maliciously disfiguring.
- 22-407. Threats to do bodily harm.

§ 22-401. Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse.

Every person convicted of any assault with intent to kill or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not less than 2 years or more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 803; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title VI, § 601; May 23, 1995, D.C. Law 10-257, § 401(b)(2), 42 DCR 53; June 11, 2013, D.C. Law 19-317, § 303(d), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 11-502, § 22-3007, § 22-3152, § 22-4001, § 24-112, § 24-403, and § 24-403.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Merger of offenses.

Weight and sufficiency of evidence—Identity of persons or things.
—Assault with intent to rob, weight and sufficiency of evidence.

Merger of offenses.

Defendant’s four convictions for assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, did not merge into one for sentencing because, while defendant pointed a gun at the four victims and demanded money, a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people. As the second gunman was defendant’s co-conspirator, defendant was vicariously liable for the second gunman’s four assaults, one for each member of the group of four victims. *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Weight and sufficiency of evidence—Identity of persons or things.

— Assault with intent to rob, weight and sufficiency of evidence.

Evidence was sufficient to support defen-

dant’s convictions, on a conspiracy theory, for aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502, and assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, because (1) one of the victims testified that the victim saw defendant put on a black ski mask and lead other perpetrators to the four victims; (2) defendant pointed a gun at the victims and demanded money; (3) a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people; (4) after defendant took money from one of the victims, that victim and defendant wrestled over defendant’s gun; (5) defendant fled with defendant’s gun; and (6) the second gunman kept the gun trained on that victim and shot that victim about 15 seconds after defendant fled. *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 22-402. Assault with intent to commit mayhem or with dangerous weapon.

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 804; June 11, 2013, D.C. Law 19-317, § 303(e), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 7-2508.01, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-401.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Instructions.

—Self-defense, instructions.

Weight and sufficiency of evidence.

—Motor vehicle offenses, weight and sufficiency of evidence.

Instructions.

— Self-defense, instructions.

In a criminal trial in which defendant was convicted for assault with a dangerous weapon under D.C. Code § 22-402, possession of a firearm during dangerous offenses under D.C. Code § 22-4504(b), and being a felon in possession of a firearm under 18 U.S.C.S. § 922(g)(1), defendant's argument that the district court improperly instructed the jury with respect to a claim of self-defense failed on appeal because there was no reasonable likelihood that the jury was confused or misled into diluting the government's burden of proof or shifting the burden of proof to defendant based on all the instructions; the district court specifically instructed the jury that the government had to disprove defendant's self-defense claim beyond a reasonable doubt, and it adequately emphasized that the burden of proof did not shift when defendant voluntarily undertook to pres-

ent a specific defense. *United States v. Purvis*, 706 F.3d 520, 2013 U.S. App. LEXIS 2867 (D.C. Cir. 2013).

Weight and sufficiency of evidence.

— Motor vehicle offenses, weight and sufficiency of evidence.

Sufficient evidence supported defendant's conviction for assault with a dangerous weapon under D.C. Code § 22-402 where: (1) defendant backed the van into a police officer; (2) the officer was driving a police vehicle, wearing an officer's uniform, and spoke with defendant as a police officer, through defendant's open car window; (3) defendant's backing into the officer, even slowly, created a grave risk of significant bodily injury, as the officer as standing, alone, at the side of a busy highway and could have been knocked very easily into oncoming traffic; and (4) the van was considered a dangerous weapon if it was used in a manner that actually caused a risk of serious injury. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Applied in *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012); *Spriggs v. United States*, 52 A.3d 878, 2012 D.C. App. LEXIS 478 (2012).

§ 22-403. Assault with intent to commit any other offense.

Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than 5 years. In addition to any other penalty provided under this

section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 805; June 11, 2013, D.C. Law 19-317, § 303(f), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 22-3007, § 22-3011, § 22-3012, § 22-4001, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-401.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-404. Assault or threatened assault in a menacing manner; stalking.

(a)(1) Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 180 days, or both.

(2) Whoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both. For the purposes of this paragraph, the term “significant bodily injury” means an injury that requires hospitalization or immediate medical attention.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806; May 8, 1993, D.C. Law 9-269, § 2, 39 DCR 9014; Nov. 17, 1993, D.C. Law 10-53, § 2, 40 DCR 5446; Aug. 20, 1994, D.C. Law 10-151, § 105(d), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 16, 41 DCR 5193; June 3, 1997, D.C. Law 11-275, § 3, 44 DCR 1408; Apr. 24, 2007, D.C. Law 16-306, § 207, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 302, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 201(c), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 7-2502.03, § 16-2333, § 22-951, and § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (a)(1) and for “not more than \$3,000” in (a)(2).

Legislative history of Law 19-317. — See note to § 22-401.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Admissibility of evidence.
Significant bodily injury.

Admissibility of evidence.

Trial court erred by admitting evidence of defendant's conviction in Virginia for sexual assault because defendant's conduct in the Vir-

ginia incident was not directed towards any of the victims in the District of Columbia incidents; while defendant made his state of mind an issue, the circumstances surrounding the aggravated sexual assault incident in Virginia and the charged crime did not entail a case of peculiar coincidence, in which mere recurrence threw light on mental states. *Thomas v. United States*, — A.3d —, 2013 D.C. App. LEXIS 26 (Jan. 31, 2013).

Significant bodily injury.

Significant bodily injury under the assault of a police officer while armed statute, D.C. Code

§§ 22-405(c) and 22-4502 is defined as an injury that requires hospitalization or immediate medical attention since the assault of a police officer and the felony assault amendments, enacted at the same time, both use the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defines that phrase; the felony assault definition applies under both statutes. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Applied in *Spriggs v. United States*, 52 A.3d 878, 2012 D.C. App. LEXIS 478 (2012).

§ 22-404.01. Aggravated assault.

(a) A person commits the offense of aggravated assault if:

(1) By any means, that person knowingly or purposely causes serious bodily injury to another person; or

(2) Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury.

(b) Any person convicted of aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 10 years, or both.

(c) Any person convicted of attempted aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 5 years, or both.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806a, as added Aug. 20, 1994, D.C. Law 10-151, § 202, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(d), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21 and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (b) and for “not more than \$5,000” in (c).

Legislative history of Law 19-317. — See note to § 22-401.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after

CASE NOTES

ANALYSIS

Merger of offenses.
Weight and sufficiency of evidence.

Merger of offenses.

Defendant’s two convictions for possession of a firearm during a crime of violence, under D.C. Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the

offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was “armed with” or had “readily available” a dangerous weapon, which could, but need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of “possession” of a “firearm.” *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Weight and sufficiency of evidence.

Evidence was sufficient to support defendant's convictions, on a conspiracy theory, for aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502, and assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, because (1) one of the victims testified that the victim saw defendant put on a black ski mask and lead other perpetrators to the four victims; (2) defendant pointed a gun at the victims and demanded

money; (3) a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people; (4) after defendant took money from one of the victims, that victim and defendant wrestled over defendant's gun; (5) defendant fled with defendant's gun; and (6) the second gunman kept the gun trained on that victim and shot that victim about 15 seconds after defendant fled. *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 22-404.02. Assault on a public vehicle inspection officer.

(a) A person commits the offense of assault on a public vehicle inspection officer if that person assaults, impedes, intimidates, or interferes with a public vehicle inspection officer while that officer is engaged in or on account of the performance of his or her official duties.

(b) A person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall:

(1) Be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 180 days; and

(2) Have his or her license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to subchapter I of Chapter 3 of Title 50 [§ 50-301 et seq.], revoked without further administrative action by the Commission.

(c) It is neither justifiable nor excusable for a person to use force to resist the civil enforcement authority exercised by an individual believed to be a public vehicle inspection officer, whether or not such enforcement action is lawful.

(d) For the purposes of this section, the term:

(1) "Commission" shall have the same meaning as provided in § 50-303(6).

(2) "Public vehicle-for-hire" shall have the same meaning as provided in § 50-303(17).

(3) "Public vehicle inspection officer" shall have the same meaning as provided in § 50-303(19).

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806b, as added June 19, 2013, D.C. Law 19-320, § 401, 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added this section.

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was

adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 22-404.03. Aggravated assault on a public vehicle inspection officer.

(a) A person commits the offense of aggravated assault on a public vehicle inspection officer if that person assaults, impedes, intimidates, or interferes

with a public vehicle inspection officer while that officer is engaged in or on account of the performance of his or her official duties, and:

(1) By any means, that person knowingly or purposely causes serious bodily injury to the public vehicle inspection officer; or

(2) Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury.

(b) A person who violates this section shall be guilty of a felony and, upon conviction, shall:

(1) Be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 10 years, or both; and

(2) Have his or her license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant [to] subchapter I of Chapter 3 of Title 50 [§ 50-301 et seq.], revoked without further administrative action by the Commission.

(c) It is neither justifiable nor excusable for a person to use force to resist the civil enforcement authority exercised by an individual believed to be a public vehicle inspection officer, whether or not such enforcement action is lawful.

(d) For the purposes of this section, the term:

(1) "Commission" shall have the same meaning as provided in § 50-303(6).

(2) "Public vehicle-for-hire" shall have the same meaning as provided in § 50-303(17).

(3) "Public vehicle inspection officer" shall have the same meaning as provided in § 50-303(19).

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 806c, as added June 19, 2013, D.C. Law 19-320, § 401, 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added this section. **Legislative history of Law 19-320.** — See note to § 22-404.02.

§ 22-405. Assault on member of police force, campus or university special police, or fire department.

(a) For the purposes of this section, the term "law enforcement officer" means any officer or member of any police force operating and authorized to act in the District of Columbia, including any reserve officer or designated civilian employee of the Metropolitan Police Department, any licensed special police officer, any officer or member of any fire department operating in the District of Columbia, any officer or employee of any penal or correctional institution of the District of Columbia, any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District of Columbia regardless of whether such institution or facility is located within the District, any investigator or code inspector employed by the government of the District of Columbia, or any officer or employee of the Department of Youth Rehabilitation

Services, Court Services and Offender Supervision Agency, the Social Services Division of the Superior Court, or Pretrial Services Agency charged with intake, assessment, or community supervision.

(b) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both.

(c) A person who violates subsection (b) of this section and causes significant bodily injury to the law enforcement officer, or commits a violent act that creates a grave risk of causing significant bodily injury to the officer, shall be guilty of a felony and, upon conviction, shall be imprisoned not more than 10 years or fined not more than the amount set forth in § 22-3571.01, or both.

(d) It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such an arrest is made by an individual he or she has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

(R.S., D.C., § 432; June 29, 1953, 67 Stat. 95, ch. 159, § 205; Oct. 20, 1965, 79 Stat. 1011, Pub. L. 89-277, § 1; July 29, 1970, 84 Stat. 601, Pub. L. 91-358, title II, § 206; Aug. 11, 1971, 85 Stat. 316, Pub. L. 92-92; May 21, 1994, D.C. Law 10-119, § 3, 41 DCR 1639; Oct. 18, 1995, D.C. Law 11-63, § 3, 42 DCR 4109; June 3, 1997, D.C. Law 11-275, § 4, 44 DCR 1408; June 12, 1999, D.C. Law 12-284, § 2, 46 DCR 1328; June 18, 1999, D.C. Law 12-288, § 2, 45 DCR 4471; Apr. 24, 2007, D.C. Law 16-306, § 208, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 202(a), 60 DCR 2064.)

Section references. — This section is referenced in § 23-524, § 24-112, § 24-261.03, § 24-403, and § 24-403.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b) and for “not more than \$10,000” in (c).

Legislative history of Law 19-317. — See note to § 22-401.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Civil actions.

Instructions.

Presumptions and burden of proof.

Significant bodily injury.

Weight and sufficiency of evidence.

Civil actions.

Although, in a juvenile delinquency proceeding, the judge determined that there was grave risk of causing significant bodily injury to a deputy when, without justifiable or excusable cause, the respondent drove the car forward in a manner that put the deputy in danger of

being hit, in violation of D.C. Code § 22-405(b) and (c), neither those findings nor the verdict prevented the respondent, as plaintiff in a civil suit, from pursuing claims against the officers for unconstitutional use of deadly force. *Fenwick v. United States*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 28720 (D.D.C. Mar. 1, 2013).

Instructions.

Trial court’s jury instruction defining significant bodily injury under the assault of a police officer while armed statute, D.C. Code §§ 22-405(c) and 22-4502, as an injury that required

hospitalization or immediate medical attention was proper as the assault of a police officer and the felony assault amendments, enacted at the same time, both used the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defined that phrase; the felony assault definition applied under both statutes. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Presumptions and burden of proof.

Plaintiff's juvenile adjudication for felony assault on an officer established, as a matter of collateral estoppel, that during the encounter plaintiff created a grave risk of causing significant bodily injury to a deputy by driving the vehicle forward in a way that could have harmed the deputy, in violation of D.C. Code § 22-405(c). But that adjudication did not establish whether the deputies reasonably could have believed that plaintiff still posed a danger to the deputies by the time they shot him. *Fenwick v. United States*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 28720 (D.D.C. Mar. 1, 2013).

Significant bodily injury.

Significant bodily injury under the assault of a police officer while armed statute, D.C. Code

§§ 22-405(c) and 22-4502, is defined as an injury that requires hospitalization or immediate medical attention since the assault of a police officer and the felony assault amendments, enacted at the same time, both use the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defines that phrase; the felony assault definition applies under both statutes. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Weight and sufficiency of evidence.

Sufficient evidence supported defendant's conviction for assault of a police officer while armed under D.C. Code §§ 22-405 and 22-4502 where: (1) defendant backed the van into a police officer; (2) the officer was driving a police vehicle, wearing an officer's uniform, and spoke with defendant as a police officer, through defendant's open car window; (3) defendant's backing into the officer, even slowly, created a grave risk of significant bodily injury, as the officer as standing, alone, at the side of a busy highway and could have been knocked very easily into oncoming traffic; and (4) the van was considered a dangerous weapon if it was used in a manner that actually caused a risk of serious injury. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

§ 22-406. Mayhem or maliciously disfiguring.

Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 807; June 11, 2013, D.C. Law 19-317, § 303(g), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 22-3152, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-401.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-407. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 6 months, or both, and, in addition thereto, or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding 1 year.

(July 16, 1912, 37 Stat. 193, ch. 235, § 2; June 29, 1953, 67 Stat. 98, ch. 159, § 212; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88-241, § 11(b); June 11, 2013, D.C. Law 19-317, § 203(b), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21, § 7-2502.03, § 16-4205, and § 22-951.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — See note to § 22-401.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Applied in *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

CHAPTER 5. BIGAMY.

Sec.
22-501. Bigamy.

§ 22-501. Bigamy.

(a) Whoever, having a spouse or domestic partner living, marries or enters a domestic partnership with another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than 2 nor more than 7 years; provided, that this section shall not apply to any person whose:

(1) Spouse or domestic partner has been continually absent for 5 successive years next before such marriage or domestic partnership without being known to such person to be living within that time;

(2) Marriage to said living spouse shall have been dissolved by a valid decree of a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract; or

(3) Domestic partnership with said living domestic partner has been terminated in accordance with § 32-702(d).

(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(b) For the purposes of this section, the term:

(1) “Domestic partner” shall have the same meaning as provided in § 32-701(3).

(2) “Domestic partnership” shall have the same meaning as provided in § 32-701(4).

(Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 870; Sept. 12, 2008, D.C. Law 17-231, § 23(a), 55 DCR 6758; June 11, 2013, D.C. Law 19-317, § 303(q), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (a-1).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was

assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 6. BREAKING INTO DEVICES DESIGNED TO RECEIVE CURRENCY.

Sec.

22-601. Breaking and entering vending machines and similar devices.

§ 22-601. Breaking and entering vending machines and similar devices.

Whoever in the District of Columbia breaks open, opens, or enters, without right, any parking meter, coin telephone, vending machine dispensing goods or services, money changer, or any other device designed to receive currency, with intent to carry away any part of such device or anything contained therein, shall be sentenced to a term of imprisonment of not more than 3 years or to a fine of not more than the amount set forth in § 22-3571.01, or both.

(July 29, 1970, 84 Stat. 600, Pub. L. 91-358, title II, § 203; June 11, 2013, D.C. Law 19-317, § 204, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$3,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 7. BRIBERY; OBSTRUCTING JUSTICE; CORRUPT INFLUENCE.

Subchapter I. Corrupt Influence

Sec.

22-704. Corrupt influence; officials.

Subchapter II. Bribery

22-712. Prohibited acts; penalty.

22-713. Bribery of witness; penalty.

Subchapter III. Obstructing Justice

Sec.

22-722. Prohibited acts; penalty.

22-723. Tampering with physical evidence; penalty.

Subchapter I. Corrupt Influence.

§ 22-704. Corrupt influence; officials.

(a) Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial,

administrative, executive, or judicial officer of the District of Columbia, or any employee, or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after the officer, employee, or other person acting in any capacity for the District of Columbia is qualified, with intent to influence such official's action on any matter which is then pending, or may by law come or be brought before such official in such official's official capacity, or to cause such official to execute any of the powers in such official vested, or to perform any duties of such official required, with partiality or favor, or otherwise than is required by law, or in consideration that such official being authorized in the line of such official's duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such official has nominated or appointed any person to any office or exercised any power in such official vested, or performed any duty of such official required, with partiality or favor, or otherwise contrary to law; and whosoever, being such an official, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery and upon conviction thereof shall be punished by imprisonment for a term not less than 6 months nor more than 5 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(b) Whosoever corrupts or attempts, directly or indirectly, to corrupt any special master, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision of such official, in relation to any matter pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, and every official who receives, or offers or agrees to receive, a bribe in any of the cases above mentioned shall be guilty of bribery and upon conviction thereof shall be punished as hereinbefore provided.

(Feb. 26, 1936, 49 Stat. 1143, ch. 87; May 21, 1994, D.C. Law 10-119, § 5, 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 308, 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence in (a).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Bribery.

§ 22-712. Prohibited acts; penalty.

(a) A person commits the offense of bribery if that person:

(1) Corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) Corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant; in return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will violate an official duty, or that the public servant will commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public servants.

(c) Any person convicted of bribery shall be fined not more than the amount set forth in § 22-3571.01 or twice the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 10 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 302, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, §§ 111(a)(3), 205(v), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (c), substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$25,000,” and “twice” for “3 times”.

Legislative history of Law 19-317. — See note to § 22-704.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-713. Bribery of witness; penalty.

(a) A person commits the offense of bribery of a witness if that person:

(1) Corruptly offers, gives, or agrees to give to another person; or

(2) Corruptly solicits, demands, accepts, or agrees to accept from another person; anything of value in return for an agreement or understanding that the testimony of the recipient will be influenced in an official proceeding before any court of the District of Columbia or any agency or department of the District of Columbia government, or that the recipient will absent himself or herself from such proceedings.

(b) Nothing in subsection (a) of this section shall be construed to prohibit the payment or receipt of witness fees provided by law, or the payment by the party upon whose behalf a witness is called and receipt by a witness of a reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such proceeding, or, in case of expert witnesses, a reasonable fee for time spent in the preparation of a technical or professional opinion and appearing and testifying.

(c) Any person convicted of bribery of a witness shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 303, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(w), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$2,500” in (c).

Legislative history of Law 19-317. — See note to § 22-704.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Obstructing Justice.

§ 22-722. Prohibited acts; penalty.

(a) A person commits the offense of obstruction of justice if that person:

(1) Knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or by threatening letter or communication, endeavors to influence, intimidate, or impede a juror in the discharge of the juror’s official duties;

(2) Knowingly uses intimidating or physical force, threatens or corruptly persuades another person, or by threatening letter or communication, endeavors to influence, intimidate, or impede a witness or officer in any official proceeding, with intent to:

(A) Influence, delay, or prevent the truthful testimony of the person in an official proceeding;

(B) Cause or induce the person to withhold truthful testimony or a record, document, or other object from an official proceeding;

(C) Evade a legal process that summons the person to appear as a witness or produce a document in an official proceeding; or

(D) Cause or induce the person to be absent from a legal official proceeding to which the person has been summoned by legal process;

(3) Harasses another person with the intent to hinder, delay, prevent, or dissuade the person from:

(A) Attending or testifying truthfully in an official proceeding;

(B) Reporting to a law enforcement officer the commission of, or any information concerning, a criminal offense;

(C) Arresting or seeking the arrest of another person in connection with the commission of a criminal offense; or

(D) Causing a criminal prosecution or a parole or probation revocation proceeding to be sought or instituted, or assisting in a prosecution or other official proceeding;

(4) Injures or threatens to injure any person or his or her property on account of the person or any other person giving to a criminal investigator in the course of any criminal investigation information related to a violation of any criminal statute in effect in the District of Columbia;

(5) Injures or threatens to injure any person or his or her property on account of the person or any other person performing his official duty as a juror, witness, or officer in any court in the District of Columbia; or

(6) Corruptly, or by threats of force, any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding.

(b) Any person convicted of obstruction of justice shall be sentenced to a maximum period of incarceration of not less than 3 years and not more than 30 years, or shall be fined not more than the amount set forth in § 22-3571.01, or both. For purposes of imprisonment following revocation of release authorized by § 24-403.01, obstruction of justice is a Class A felony.

(Dec. 1, 1982, D.C. Law 4-164, § 502, 29 DCR 3976; May 7, 1993, D.C. Law 9-268, § 2(c), 39 DCR 5702; May 23, 1995, D.C. Law 10-256, § 3, 42 DCR 20; June 8, 2001, D.C. Law 13-302, § 5, 47 DCR 7249; Dec. 10, 2009, D.C. Law 18-88, § 214(m), 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 205(bb), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546, § 23-1322, and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (b).

Legislative history of Law 19-317. — See note to § 22-704.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Weight and sufficiency of evidence.

Defendant’s convictions of obstruction of justice and conspiracy to obstruct justice were reversed, as no rational juror could have found beyond a reasonable doubt that defendant, acting through and conspiring with his father and his uncle, had the specific intent to threaten his

friend to prevent him from giving truthful testimony at defendant’s murder trial. *Harrison v. United States*, — A.3d —, 2012 D.C. App. LEXIS 636 (Dec. 20, 2012).

Applied in *Spriggs v. United States*, 52 A.3d 878, 2012 D.C. App. LEXIS 478 (2012).

§ 22-723. Tampering with physical evidence; penalty.

(a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

(b) Any person convicted of tampering with physical evidence shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 3 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 503, 29 DCR 3976; July 15, 2004, D.C. Law 15-174, § 301, 51 DCR 3677; June 11, 2013, D.C. Law 19-317, § 205(cc), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — See note to § 22-704.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 8. BURGLARY.

Sec.

22-801. Definition and penalty.

§ 22-801. Definition and penalty.

(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than 5 years nor more than 30 years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than 2 years nor more than 15 years.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 823; Dec. 27, 1967, 81 Stat. 736, Pub. L. 90-226, title VI, § 602; June 11, 2013, D.C. Law 19-317, § 303(l), 60 DCR 2064.)

Section references. — This section is referenced in § 11-502, § 22-4001, § 23-546, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Weight and sufficiency of evidence.
—In general.

Weight and sufficiency of evidence.

— In general.

Defendant was convicted of first-degree bur-

glary in violation of D.C. Code § 22-801(a), attempted robbery, and unlawfully possessing a firearm after a felony conviction, because he entered the victim's apartment and remained after being asked to leave, walked into her bedroom, and demanded money while holding a gun. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

CHAPTER 8A. CRIMES COMMITTED AGAINST MINORS.

Sec.

22-811. Contributing to the delinquency of a minor.

§ 22-811. Contributing to the delinquency of a minor.

(a) It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to:

- (1) Be truant from school;
- (2) Possess or consume alcohol or, without a valid prescription, a controlled substance as that term is defined in § 48-901.02(4);
- (3) Run away for the purpose of criminal activity from the place of abode of his or her parent, guardian, or other custodian;
- (4) Violate a court order;
- (5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience;
- (6) Join a criminal street gang as that term is defined in § 22-951(e)(1); or
- (7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.

(b)(1) Except as provided in paragraphs (2), (4) and (5) of this subsection, a person convicted of violating subsection (a)(1)-(6) of this section shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 6 months, or both.

(2) A person convicted of violating subsection (a)(2)-(6) of this section, having previously been convicted of an offense under subsection (a)(2)-(6) of this section or a substantially similar offense in this or any other jurisdiction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.

(3) Except as provided in paragraphs (4) and (5) of this subsection, a person convicted of violating subsection (a)(7) of this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(4) A person convicted of violating subsection (a) of this section that results in serious bodily injury to the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(5) A person convicted of violating subsection (a) of this section that results in the death of the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(c) The penalties under this section are in addition to any other penalties permitted by law.

(d) It is not a defense to a prosecution under this section that the minor does not engage in, is not charged with, is not adjudicated delinquent for, or is not convicted as an adult, for any conduct set forth in subsection (a)(1)-(7) of this section.

(e) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (a) of this section for which the penalty is set forth in subsection (c)(1) of this section.

(f) For the purposes of this section, the term:

(1) "Adult" means a person 18 years of age or older at the time of the offense.

(2) "Minor" means a person under 18 years of age at the time of the offense.

(Apr. 24, 2007, D.C. Law 16-306, § 103, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(b), 60 DCR 2064.)

Section references. — This section is referenced in § 7-403.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (b), substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (b)(1), for "not more than \$3,000" in (b)(2), for "not more than \$5,000" in (b)(3) and (b)(4), and for "not more than \$10,000" in (b)(5).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Collateral estoppel.

By winning severance of a charge of contributing to the delinquency of a minor (CDM) from other charges, of which he was ultimately acquitted, defendant waived double-jeopardy protection from later prosecution for CDM, but did not waive the shield of collateral estoppel; thus,

the prosecution was estopped from re-litigating whether he assisted in an armed robbery in the ways the complainant asserted, but could try to prove he committed CDM in some other way, even if the conduct would also constitute aiding and abetting robbery. *Joya v. United States*, 53 A.3d 309, 2012 D.C. App. LEXIS 480 (2012).

CHAPTER 8B. CRIMES AGAINST PUBLIC OFFICIALS.

Sec.

22-851. Protection of District public officials.

§ 22-851. Protection of District public officials.

(a) For the purposes of this section, the term:

(1) "Family member" means an individual to whom the official or employee of the District of Columbia is related by blood, legal custody, marriage, domestic partnership, having a child in common, the sharing of a mutual residence, or the maintenance of a romantic relationship not necessarily including a sexual relationship.

(2) "Official or employee" means a person who currently holds or formerly held a paid or unpaid position in the legislative, executive, or judicial branch of government of the District of Columbia, including boards and commissions.

(b) A person who corruptly or, by threat or force, or by any threatening letter or communication, intimidates, impedes, interferes with, or retaliates against, or attempts to intimidate, impede, interfere with, or retaliate against any official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

(c) A person who stalks, threatens, assaults, kidnaps, or injures any official or employee or vandalizes, damages, destroys, or takes the property of an official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 3 years, or both, in addition to any other penalties authorized by law.

(d) A person who stalks, threatens, assaults, kidnaps, or injures a family member or vandalizes, damages, destroys, or takes the property of a family member on account of the performance of the official or employee's duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 3 years, or both, in addition to any other penalties authorized by law.

(Apr. 24, 2007, D.C. Law 16-306, § 106, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(e), 60 DCR 2064.)

Section references. — This section is referenced in § 5-132.21.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$5,000" in (b), and for "not more than \$3,000" in (c) and (d).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 9. COMMERCIAL COUNTERFEITING.

Sec.

22-902. Trademark counterfeiting.

§ 22-902. Trademark counterfeiting.

(a) A person commits the offense of counterfeiting if such person willfully manufactures, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any items, or services bearing or identified by a counterfeit mark. There shall be a rebuttable presumption that a person having possession, custody, or control of more than 15 items bearing a counterfeit mark possesses said items with the intent to sell or distribute.

(b) A person convicted of counterfeiting shall be subject to the following penalties:

(1) For the first conviction, except as provided in paragraphs (2) and (3) of this subsection, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 180 days, or both;

(2) For the second conviction, or if convicted under this section of an offense involving more than 100 but fewer than 1,000 items, or involving items with a total retail value greater than \$1,000 but less than \$10,000, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 3 years, or both; and

(3) For the third or subsequent conviction, or if convicted under this section of an offense involving the manufacture or production of items bearing counterfeit marks involving 1,000 or more items, or involving items with a total retail value of \$10,000 or greater, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 10 years, or both.

(c) For the purposes of this chapter, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, advertises, distributes, offers for sale, sells, or possesses.

(d) The fines provided in subsection (b) of this section shall be no less than twice the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(e) Any items bearing a counterfeit mark and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any kind, employed or used in connection with a violation of this chapter shall be seized by any law enforcement officer, including any designated civilian employee of the Metropolitan Police Department, in accordance with the procedures established by § 48-905.02.

(1) All seized personal property shall be forfeited.

(2) Upon the request of the owner of the intellectual property, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the owner of the intellectual property does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the owner of the intellectual property consents to another disposition.

(f) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(g) The remedies provided for herein shall be cumulative to the other civil and criminal remedies provided by law.

(June 3, 1997, D.C. Law 11-271, § 3, 43 DCR 4585; June 12, 1999, D.C. Law 12-284, § 3, 46 DCR 1328; June 11, 2013, D.C. Law 19-317, §§ 111(b), 207, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (b), substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000” in (b)(1), for “not exceeding \$3,000” in (b)(2), and for “not exceeding \$10,000” in (b)(3); and substituted “twice” for “3 times” in (d).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 9A. CRIMINAL ABUSE AND NEGLECT OF VULNERABLE ADULTS.

Sec.

22-936. Penalties.

§ 22-936. Penalties.

(a) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable person shall be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(b) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable adult which causes serious bodily injury or severe mental distress shall be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisoned up to 10 years, or both.

(c) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable adult which causes permanent bodily harm or death shall be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisoned up to 20 years, or both.

(June 8, 2001, D.C. Law 13-301, § 206, 47 DCR 7039; June 11, 2013, D.C. Law 19-317, § 208, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 22-951.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “up to \$1,000” in (a), for “up to \$100,000” in (b), and for “up to \$250,000” in (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 9B. CRIMINAL STREET GANGS.

Sec.

22-951. Criminal street gangs.

§ 22-951. Criminal street gangs.

(a)(1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 6 months, or both.

(b)(1) It is unlawful for any person who is a member of or actively participates in a criminal street gang to knowingly and willfully participate in any felony or violent misdemeanor committed for the benefit of, at the direction of, or in association with any other member or participant of that criminal street gang.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(c)(1) It is unlawful for a person to use or threaten to use force, coercion, or intimidation against any person or property, in order to:

(A) Cause or attempt to cause an individual to:

(i) Join a criminal street gang;

(ii) Participate in activities of a criminal street gang;

(iii) Remain as a member of a criminal street gang; or

(iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state; or

(B) Retaliate against an individual for a refusal to:

(i) Join a criminal street gang;

(ii) Participate in activities of a criminal street gang;

(iii) Remain as a member of a criminal street gang; or

(iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(d) The penalties under this section are in addition to any other penalties permitted by law.

(e) For the purposes of this section, the term:

(1) "Criminal street gang" means an association or group of 6 or more persons that:

(A) Has as a condition of membership or continued membership, the committing of or actively participating in committing a crime of violence, as defined by § 23-1331(4); or

(B) Has as one of its purposes or frequent activities, the violation of the criminal laws of the District, or the United States, except for acts of civil disobedience.

(2) "Violent misdemeanor" shall mean:

(A) Destruction of property (§ 22-303);

(B) Simple assault (§ 22-404(a));

(C) Stalking (§ 22-404(b) [see now § 22-3132]);

(D) Threats to do bodily harm (§ 22-407);

(E) Criminal abuse or criminal neglect of a vulnerable adult (§ 22-936(a));

(F) Cruelty to animals (§ 22-1001(a)); and

(G) Possession of prohibited weapon (§ 22-4514).

(Apr. 24, 2007, D.C. Law 16-306, § 101, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(a), 60 DCR 2064.)

Section references. — This section is referenced in § 22-811.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (a)(2), for "not more than \$5,000" in (b)(2), and for "not more than \$10,000" in (c)(2).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 10. CRUELTY TO ANIMALS.

Sec.
22-1006.01. Penalty for engaging in animal fighting.
22-1012. Abandonment of maimed or diseased

animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

§ 22-1006.01. Penalty for engaging in animal fighting.

(a) Any person who: (1) organizes, sponsors, conducts, stages, promotes, is employed at, collects an admission fee for, or bets or wagers any money or other valuable consideration on the outcome of an exhibition between two or more animals of fighting, baiting, or causing injury to each other; (2) any person who owns, trains, buys, sells, offers to buy or sell, steals, transports, or possesses any animal with the intent that it engage in any such exhibition; (3) any person who knowingly allows any animal used for such fighting or baiting to be kept, boarded, housed, or trained on, or transported in, any property owned or

controlled by him; (4) any person who owns, manages, or operates any facility and knowingly allows that facility to be kept or used for the purpose of fighting or baiting any animal; (5) any person who knowingly or recklessly permits any act described in this subsection, to be done on any premises under his or her ownership or control, or who aids or abets that act; or (6) any person who is knowingly present as a spectator at any such exhibition, is guilty of a felony, punishable by a fine of not more than the amount set forth in § 22-3571.01, imprisonment not to exceed 5 years, or both. The court may also impose any penalties listed in § 22-1001(a).

(b) Repealed.

(c) For the purposes of this section, the term:

(1) "Animal" means a vertebrate other than a human, including, but not limited to, dogs and cocks.

(2) "Baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals.

(3) "Fighting" means an organized event wherein there is a display of combat between 2 or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event.

(June 25, 1892, 27 Stat. 61, ch. 135, § 6a, as added June 8, 2001, D.C. Law 13-303, § 3(a), 47 DCR 7307; Dec. 5, 2008, D.C. Law 17-281, § 109, 55 DCR 9186; June 11, 2013, D.C. Law 19-317, § 210, 60 DCR 2064.)

Section references. — This section is referenced in § 22-1015.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$25,000" in (a).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1012. Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

(a) A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than 3 hours after he or she receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than \$10 and not more than the amount set forth in § 22-3571.01, or by imprisonment in jail not more than 180 days, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of 2 reputable citizens called by such officer to view the same in such officer's presence, to be glandered,

injured, or diseased past recovery for any useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

(b) Nothing contained in §§ 22-1001 to 22-1009, inclusive, and §§ 22-1011 and 22-1309 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society.

(Aug. 23, 1871, Leg. Assem., p. 138, ch. 106, § 11; June 25, 1892, 27 Stat. 60, ch. 135, § 4; May 21, 1994, D.C. Law 10-119, § 6, 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 102(b), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 209(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$250” in (a).

Legislative history of Law 19-317. — See note to § 22-1006.01.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 11. CRUELTY TO CHILDREN.

Sec.

22-1101. Definition and penalty.

22-1102. Refusal or neglect of guardian to pro-

vide for child under 14 years of age.

§ 22-1101. Definition and penalty.

(a) A person commits the crime of cruelty to children in the first degree if that person intentionally, knowingly, or recklessly tortures, beats, or otherwise willfully maltreats a child under 18 years of age or engages in conduct which creates a grave risk of bodily injury to a child, and thereby causes bodily injury.

(b) A person commits the crime of cruelty to children in the second degree if that person intentionally, knowingly, or recklessly:

(1) Maltreats a child or engages in conduct which causes a grave risk of bodily injury to a child; or

(2) Exposes a child, or aids and abets in exposing a child in any highway, street, field house, outhouse or other place, with intent to abandon the child.

(c)(1) Any person convicted of cruelty to children in the first degree shall be fined not more than \$10,000 or be imprisoned not more than 15 years, or both.

(2) Any person convicted of cruelty to children in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 10 years, or both.

(Feb. 13, 1885, 23 Stat. 303, ch. 58, § 3; Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 814; May 21, 1994, D.C. Law 10-119, § 7, 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 201, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 211, 60 DCR 2064.)

Section references. — This section is referenced in § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (c)(1) and (c)(2).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1102. Refusal or neglect of guardian to provide for child under 14 years of age.

Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of 14 years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than the amount set forth in § 22-3571.01, or by imprisonment in the Workhouse of the District of Columbia for not more than 3 months, or both such fine and imprisonment.

(Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 4; June 11, 2013, D.C. Law 19-317, § 212, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$100”.

Legislative history of Law 19-317. — See note to § 22-1101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 12A. DETECTION DEVICE TAMPERING.

Sec.

22-1211. Tampering with a detection device.

§ 22-1211. Tampering with a detection device.

(a)(1) It is unlawful for a person who is required to wear a device as a condition of a protection order, pretrial, presentence, or predisposition release, probation, supervised release, parole, or commitment, or who is required to wear a device while incarcerated, to:

(A) Intentionally remove or alter the device, or to intentionally interfere with or mask or attempt to interfere with or mask the operation of the device;

(B) Intentionally allow any unauthorized person to remove or alter the device, or to intentionally interfere with or mask or attempt to interfere with or mask the operation of the device; or

(C) Intentionally fail to charge the power for the device or otherwise maintain the device's battery charge or power.

(2) For the purposes of this subsection, the term "device" includes a bracelet, anklet, or other equipment with electronic monitoring capability or global positioning system or radio frequency identification technology.

(b) Whoever violates this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(Dec. 10, 2009, D.C. Law 18-88, § 103, 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 8, 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 213(c), 60 DCR 2064; June 19, 2013, D.C. Law 19-320, § 101, 60 DCR 3390.)

Section references. — This section is referenced in § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (b).

The 2013 amendment by D.C. Law 19-320 added (a)(1)(C); and made related changes.

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to

Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13. DISTURBANCES OF THE PUBLIC PEACE.

Sec.

22-1301. Affrays.

22-1307. Crowding, obstructing, or incommoding.

22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor.

22-1314.02. Prohibited acts.

Sec.

22-1319. False alarms and false reports; hoax weapons.

22-1321. Disorderly conduct.

22-1322. Rioting or inciting to riot.

22-1323. Obstructing bridges connecting D.C. and Virginia.

§ 22-1301. Affrays.

Whoever is convicted of an affray in the District shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(July 16, 1912, 37 Stat. 192, ch. 235, § 1; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a); Aug. 20, 1994, D.C. Law 10-151, § 107, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 203(a)(1), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1307. Crowding, obstructing, or incommoding.

(a) It is unlawful for a person, alone or in concert with others:

(1) To crowd, obstruct, or incommode:

(A) The use of any street, avenue, alley, road, highway, or sidewalk;

(B) The entrance of any public or private building or enclosure;

(C) The use of or passage through any public building or public conveyance; or

(D) The passage through or within any park or reservation; and

(2) To continue or resume the crowding, obstructing, or incommoding after being instructed by a law enforcement officer to cease the crowding, obstructing, or incommoding.

(b)(1) It is unlawful for a person, alone or in concert with others, to engage in a demonstration in an area where it is otherwise unlawful to demonstrate and to continue or resume engaging in a demonstration after being instructed by a law enforcement officer to cease engaging in a demonstration.

(2) For purposes of this subsection, the term “demonstration” means marching, congregating, standing, sitting, lying down, parading, demonstrating, or patrolling by one or more persons, with or without signs, for the purpose of persuading one or more individuals, or the public, or to protest some action, attitude, or belief.

(c) A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

(July 29, 1892, 27 Stat. 323, ch. 320, § 6; July 8, 1898, 30 Stat. 723, ch. 638; June 29, 1953, 67 Stat. 97, ch. 159, § 210; May 26, 2011, D.C. Law 18-375, § 2(a), 58 DCR 731; June 11, 2013, D.C. Law 19-317, § 214(a), 60 DCR 2064; June 19, 2013, D.C. Law 19-320, § 102, 60 DCR 3390.)

Section references. — This section is referenced in § 23-101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

The 2013 amendment by D.C. Law 19-320 rewrote this section and the section heading.

Legislative history of Law 19-317. — See note to § 22-1301.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amend-

ments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor.

It is unlawful for a person, in public, to make an obscene or indecent exposure of his or her genitalia or anus, to engage in masturbation, or to engage in a sexual act as defined in § 22-3001(8). It is unlawful for a person to make an obscene or indecent sexual proposal to a minor. A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

(July 29, 1892, 27 Stat. 324, ch. 320, § 9; July 8, 1898, 30 Stat. 724, ch. 638; Sept. 26, 1942, 56 Stat. 760, ch. 565; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 101; June 29, 1953, 67 Stat. 92, ch. 159, § 202(a)(1); Apr. 24, 2007, D.C. Law 16-306, § 210, 53 DCR 8610; May 26, 2011, D.C. Law 18-375, § 2(b), 58 DCR 731; Sept. 26, 2012, D.C. Law 19-171, § 79, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 214(b), 60 DCR 2064.)

Section references. — This section is referenced in § 22-1809, § 22-4001, § 22-4151, § 23-101, and § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — See note to § 22-1301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1314.02. Prohibited acts.

(a) It shall be unlawful for a person, except as otherwise authorized by District or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a medical facility or to willfully or recklessly disrupt the normal functioning of such facility by:

(1) Physically obstructing, impeding, or hindering the free passage of an individual seeking to enter or depart the facility or from the common areas of the real property upon which the facility is located;

(2) Making noise that unreasonably disturbs the peace within the facility;

(3) Trespassing on the facility or the common areas of the real property upon which the facility is located;

(4) Telephoning the facility repeatedly to harass or threaten owners, agents, patients, and employees, or knowingly permitting any telephone under his or her control to be so used for the purpose of threatening owners, agents, patients, and employees; or

(5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the medical facility or knowingly permitting any telephone under his or her control to be used for such purpose.

(b) A person shall not act alone or in concert with others with the intent to prevent a health professional or his or her family from entering or leaving the health professional’s home.

(c) Subsections (a) and (b) of this section shall not be construed to prohibit any otherwise lawful picketing or assembly.

(d) Any person who violates subsections (a) or (b) of this section, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(July 29, 1892, 27 Stat. 322, ch. 320, § 11b, as added Sept. 20, 1996, D.C. Law 11-157, § 2, 43 DCR 3699; June 11, 2013, D.C. Law 19-317, § 214(c), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 22-1314.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (d).

Legislative history of Law 19-317. — See note to § 22-1301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1319. False alarms and false reports; hoax weapons.

(a) It shall be unlawful for any person or persons to willfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this subsection shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 6 months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this subsection shall be on information filed in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.

(a-1) It shall be unlawful for any person or persons to willfully or knowingly use, or allow the use of, the 911 call system to make a false or fictitious report or complaint which initiates a response by District of Columbia emergency personnel or officials when, at the time of the call or transmission, the person knows the report or complaint is false. Any person or persons violating the provisions of this subsection shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 6 months. Prosecutions for violation of the provisions of this subsection shall be on information filed in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.

(b)(1) It shall be unlawful for any person to willfully or knowingly make, or cause to be made, a false or fictitious report to any individual which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves, is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully and knowingly give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor and be punished by imprisonment of not more than one year or fined in an amount not more than the amount set forth

in § 22-3571.01 or the costs of responding to and consequential damages resulting from the offense, or both.

(c)(1) It shall be unlawful for anyone to willfully or knowingly, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, make, or cause to be made, a false or fictitious report to any individual, which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves, is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully or knowingly, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a felony and may be punished by imprisonment of not more than 5 years or fined in an amount not more than the amount set forth in § 22-3571.01 or the costs of responding to and consequential damages resulting from the offense, or both.

(d)(1) It shall be unlawful for any person to willfully or knowingly, during a state of emergency, as declared by the Mayor pursuant to § 7-2304, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, make, or cause to be made, a false or fictitious report to any individual, which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves, is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully or knowingly, during a state of emergency, as declared by the Mayor pursuant to § 7-2304, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a felony and may be punished by imprisonment of not more than 10 years or fined in an amount not more than the amount set forth in § 22-3571.01 or the cost of responding to and consequential damages resulting from the offense, or both.

(e) For the purposes of subsections (b), (c), and (d) of this section, the manner in which the false or fictitious report is communicated may include, but is not limited to:

(1) A writing;

(2) An electronic transmission producing a visual, audio, or written result;

- (3) An oral statement; or
- (4) A signing.

(f) There is jurisdiction to prosecute any person who participates in the commission of any offense described in this section if any act in furtherance of the offense occurs in the District of Columbia or where the effect of any act in furtherance of the offense occurs in the District of Columbia.

(June 8, 1906, 34 Stat. 220, ch. 3055, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); May 21, 1994, D.C. Law 10-119, § 8, 41 DCR 1639; Oct. 17, 2002, D.C. Law 14-194, § 153, 49 DCR 5306; Apr. 7, 2006, D.C. Law 16-91, § 142, 52 DCR 10637; May 26, 2011, D.C. Law 18-373, § 3; June 11, 2013, D.C. Law 19-317, § 215, 60 DCR 2064.)

Section references. — This section is referenced in § 5-117.05.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000” in (a) and (a-1), for “not to exceed the greater of \$10,000” in (b)(3), for “not to exceed

the greater of \$50,000” in (c)(3), and for “not to exceed \$100,000” in (d)(3).

Legislative history of Law 19-317. — See note to § 22-1301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1321. Disorderly conduct.

(a) In any place open to the general public, and in the communal areas of multi-unit housing, it is unlawful for a person to:

(1) Intentionally or recklessly act in such a manner as to cause another person to be in reasonable fear that a person or property in a person’s immediate possession is likely to be harmed or taken;

(2) Incite or provoke violence where there is a likelihood that such violence will ensue; or

(3) Direct abusive or offensive language or gestures at another person (other than a law enforcement officer while acting in his or her official capacity) in a manner likely to provoke immediate physical retaliation or violence by that person or another person.

(b) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding.

(c) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct with the intent and effect of impeding or disrupting the lawful use of a public conveyance by one or more other persons.

(c-1) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct in a public building with the intent and effect of impeding or disrupting the orderly conduct of business in that public building.

(d) It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.

(e) It is unlawful for a person to urinate or defecate in public, other than in a urinal or toilet.

(f) It is unlawful for a person to stealthily look into a window or other opening of a dwelling, as defined in § 6-101.07, under circumstances in which an occupant would have a reasonable expectation of privacy. It is not necessary that the dwelling be occupied at the time the person looks into the window or other opening.

(g) It is unlawful, under circumstances whereby a breach of the peace may be occasioned, to interfere with any person in any public place by jostling against the person, unnecessarily crowding the person, or placing a hand in the proximity of the person's handbag, pocketbook, or wallet.

(h) A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned not more than 90 days, or both.

(June 29, 1953, 67 Stat. 98, ch. 159, § 211(a); redesignated § 211, May 21, 1994, D.C. Law 10-119, § 9(a), 41 DCR 1639; May 26, 2011, D.C. Law 18-375, § 3(a), 58 DCR 731; June 11, 2013, D.C. Law 19-317, § 202(c), 60 DCR 2064; June 19, 2013, D.C. Law 19-320, § 103, 60 DCR 3390.)

Section references. — This section is referenced in § 16-801 and § 22-1809.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (h).

The 2013 amendment by D.C. Law 19-320 substituted “with the intent and effect of impeding or disrupting” for “which unreasonably

impedes, disrupts, or disturbs” in (c); and added (c-1).

Legislative history of Law 19-317. — See note to § 22-1301.

Legislative history of Law 19-320. — See note to § 22-1307.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1322. Rioting or inciting to riot.

(a) A riot in the District of Columbia is a public disturbance involving an assemblage of 5 or more persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons.

(b) Whoever willfully engages in a riot in the District of Columbia shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(c) Whoever willfully incites or urges other persons to engage in a riot shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(d) If in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of \$5,000, every person who willfully incited or urged others to engage in the riot shall be punished by imprisonment for not more than 10 years or a fine of not more than the amount set forth in § 22-3571.01, or both.

(Dec. 27, 1967, 81 Stat. 742, Pub. L. 90-226, title IX, § 901; Aug. 20, 1994, D.C. Law 10-151, § 111, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 216, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b) and (c), and for “not more than \$10,000” in (d).

Legislative history of Law 19-317. — See note to § 22-1301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1323. Obstructing bridges connecting D.C. and Virginia.

Effective with respect to conduct occurring on or after August 5, 1997, whoever in the District of Columbia knowingly and willfully obstructs any bridge connecting the District of Columbia and the Commonwealth of Virginia:

- (1) Shall be fined not less than \$1,000 and not more than \$5,000, and in addition may be imprisoned not more than 30 days; or
- (2) If applicable, shall be subject to prosecution by the District of Columbia under the provisions of District law and regulation amended by the Safe Streets Anti-Prostitution Amendment Act of 1996.
- (3) The fine set forth in this section shall not be limited by § 22-3571.01.

(Aug. 5, 1997, 111 Stat. 782, Pub. L. 105-33, § 11712(e); June 11, 2013, D.C. Law 19-317, § 112(b), 60 DCR 2064.)

Section references. — This section is referenced in § 5-133.17.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (3).

Legislative history of Law 19-317. — See note to § 22-1301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13A. ENTRY INTO A MOTOR VEHICLE, UNLAWFUL.

Sec.

22-1341. Unlawful entry of a motor vehicle.

§ 22-1341. Unlawful entry of a motor vehicle.

(a) It is unlawful to enter or be inside of the motor vehicle of another person without the permission of the owner or person lawfully in charge of the motor vehicle. A person who violates this subsection shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

(b) Subsection (a) of this section shall not apply to:

(1) An employee of the District government in connection with his or her official duties;

(2) A tow crane operator who has valid authorization from the District government or from the property owner on whose property the motor vehicle is illegally parked; or

(3) A person with a security interest in the motor vehicle who is legally authorized to seize the motor vehicle.

(c) For the purposes of this section, the term “enter the motor vehicle” means to insert any part of one’s body into any part of the motor vehicle, including the passenger compartment, the trunk or cargo area, or the engine compartment.

(Dec. 10, 2009, D.C. Law 18-88, § 102, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 213(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 14. FALSE PRETENSES; FALSE PERSONATION.

Sec.

22-1402. Recordation of deed, contract, or conveyance with intent to extort money.

22-1403. False personation before court, officers, notaries.

22-1404. Falsely impersonating public officer or minister.

Sec.

22-1405. False personation of inspector of departments of District.

22-1406. False personation of police officer.

22-1409. Use of official insignia; penalty for unauthorized use.

§ 22-1402. Recordation of deed, contract, or conveyance with intent to extort money.

Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the Recorder of Deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than \$1,000 and not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(June 30, 1902, 32 Stat. 535, ch. 1329, § 845a; Aug. 20, 1994, D.C. Law 10-151, § 106, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 217, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added “and not more than the amount set forth in § 22-3571.01”.

Legislative history of Law 19-317. — Law

19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1403. False personation before court, officers, notaries.

(a) Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses or accepts domestic partnership registrations, with intent to defraud, shall be imprisoned for not less than 1 year nor more than 5 years.

(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(b) For the purposes of this section, the term "domestic partnership" shall have the same meaning as provided in § 32-701(4).

(Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 859; Feb. 17, 1909, 35 Stat. 623, ch. 134; Sept. 12, 2008, D.C. Law 17-231, § 23(b), 55 DCR 6758; June 11, 2013, D.C. Law 19-317, § 303(n), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (a-1).

Legislative history of Law 19-317. — See note to § 22-1402.

Editor's notes.

— Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1404. Falsely impersonating public officer or minister.

Whoever falsely represents himself or herself to be a judge of the Superior Court of the District of Columbia, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his or her appointment or commission has expired or he or she has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than 1 year nor more than 3 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); May 21, 1994, D.C. Law 10-119, § 2(h), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 2, 43 DCR 528; June 11, 2013, D.C. Law 19-317, § 303(o), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-1402.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1405. False personation of inspector of departments of District.

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the Department of Human Services of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the Superior Court of the District of Columbia shall be punished by a fine of not less than \$10 nor more than \$50 for the 1st offense, and for each subsequent offense by a fine of not less than \$50 and not more than the amount set forth in § 22-3571.01, or imprisonment in the Jail of the District not exceeding 6 months, or both, in the discretion of the court.

(Mar. 2, 1897, 29 Stat. 619, ch. 364; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); June 11, 2013, D.C. Law 19-317, § 218, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$100”.

Legislative history of Law 19-317. — See note to § 22-1402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1406. False personation of police officer.

It shall be a misdemeanor, punishable by imprisonment in the District jail or penitentiary not exceeding 180 days, or by a fine not more than the amount set forth in § 22-3571.01, for any person, not a member of the police force, to falsely represent himself as being such member, with a fraudulent design.

(R.S., D.C., § 433; Aug. 20, 1994, D.C. Law 10-151, § 114, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 219 ac, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1402.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1409. Use of official insignia; penalty for unauthorized use.

(a) The Metropolitan Police Department and the Fire and Emergency Medical Services Department shall have the sole and exclusive rights to have and use, in carrying out their respective missions, the official badges, patches, emblems, copyrights, descriptive or designating marks, and other official insignia displayed upon their current and future uniforms.

(b) Any person who, for any reason, makes or attempts to make unauthorized use of, or aids or attempts to aid another person in the unauthorized use or attempted unauthorized use of the official badges, patches, emblems, copyrights, descriptive or designated marks, or other official insignia of the Metropolitan Police Department or the Fire and Emergency Medical Services Department shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than one year, or both.

(June 3, 2002, D.C. Law 14-194, § 702, 49 DCR 5306; June 11, 2013, D.C. Law 19-317, § 220, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — See note to § 22-1402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 15. FORGERY, FRAUDS.

Sec.
22-1502. Forging or imitating brands or packaging of goods.
22-1510. Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; “credit” defined.

Sec.
22-1513. Penalty under § 22-1511.
22-1514. Fraudulent interference or collusion in jury selection.

§ 22-1502. Forging or imitating brands or packaging of goods.

Whoever wilfully forges, or counterfeits, or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 879; Aug. 20, 1994, D.C. Law 10-151, § 105(e), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(v), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1510. Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; “credit” defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, order, or other instrument in full upon its presentation, shall, if the amount of such check, draft, order, or other instrument is \$1,000 or more, be guilty of a felony and fined not more than the amount set forth in § 22-3571.01 or imprisoned for not less than 1 year nor more than 3 years, or both; or if the amount of such check, draft, order, or other instrument has some value, be guilty of a misdemeanor and fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, order, or other instrument, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within 5 days after receiving notice in person, or writing, that such check, draft, order, or other instrument has not been paid. The word “credit,” as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, order, or other instrument.

(July 1, 1922, 42 Stat. 820, ch. 273; Oct. 22, 1970, 84 Stat. 1094, Pub. L. 91-497, § 3; Aug. 20, 1994, D.C. Law 10-151, § 108, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 221, 60 DCR 2064; June 19, 2013, D.C. Law 19-320, § 104, 60 DCR 3390.)

Section references. — This section is referenced in § 28-3152.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in the first sentence, substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$3,000”, and the second occurrence for “not more than \$1,000”.

The 2013 amendment by D.C. Law 19-320, in the first sentence, substituted “instrument is \$1,000 or more” for “instrument is \$100 or more” and substituted “has some value” for “is less than \$100”.

Legislative history of Law 19-317. — See note to § 22-1502.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1513. Penalty under § 22-1511.

Any person, firm, or association violating any of the provisions of § 22-1511 shall upon conviction thereof, be punished by a fine of not more than the amount set forth in § 22-3571.01 or by imprisonment of not more than 60 days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of § 22-1511 shall be fined not more than the amount set forth in § 22-3571.01, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than 60 days, in the discretion of the court.

(May 29, 1916, 39 Stat. 165, ch. 130, § 3; June 11, 2013, D.C. Law 19-317, § 222, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” twice.

Legislative history of Law 19-317. — See note to § 22-1502.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1514. Fraudulent interference or collusion in jury selection.

If any person shall fraudulently tamper with any box or wheel used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box or wheel, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box or wheel the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box or wheel a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 213; Apr. 19, 1920, 41 Stat. 560, ch. 153, § 213; Mar. 27, 1968, 82 Stat. 63, Pub. L. 90-274, § 103(f); Aug. 20, 1994, D.C. Law 10-151, § 105(f), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1502.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 17. GAMBLING.

Subchapter I. General Provisions

- Sec.
22-1701. Lotteries; promotion; sale or possession of tickets.
22-1702. Possession of lottery or policy tickets.
22-1703. Permitting sale of lottery tickets on premises.
22-1704. Gaming; setting up gaming table; inducing play.
22-1705. Gambling premises; definition; prohi-

Sec.

- bition against maintaining; forfeiture; liens; deposit of moneys in Treasury; penalty; subsequent offenses.
22-1706. Three-card monte and confidence games.
22-1708. Gambling pools and bookmaking; athletic contest defined.
22-1713. Corrupt influence in connection with athletic contests.

Subchapter I. General Provisions.

§ 22-1701. Lotteries; promotion; sale or possession of tickets.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him or her to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall sell or transfer, or have in his or her possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he or she shall be fined upon conviction of each said offense not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other device shall be prima facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

(Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 863; June 30, 1902, 32 Stat. 535, ch. 1329; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 1; May 21, 1994, D.C. Law 10-119, § 2(i), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 201(n), 60 DCR 2064.)

Section references. — This section is referenced in § 22-1702, § 22-1705, § 22-1718, and § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall

apply only to offenses committed on or after June 11, 2013.

§ 22-1702. Possession of lottery or policy tickets.

If any person shall, within the District of Columbia, knowingly have in his or her possession or under his control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of § 22-1701, § 22-1704, or § 22-1708, he or she shall, upon conviction of each such offense, be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 180 days, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof.

(Mar. 3, 1901, ch. 854, § 863a; Apr. 5, 1938, 52 Stat. 198, ch. 72, § 2; June 29, 1953, 67 Stat. 95, ch. 159, § 206(a); May 21, 1994, D.C. Law 10-119, § 2(j), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(g), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(o), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1703. Permitting sale of lottery tickets on premises.

If any person shall knowingly permit, on any premises under his or her control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he or she shall be fined not less than \$50 and not more than the amount set forth in § 22-3571.01, or be imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 864; May 21, 1994, D.C. Law 10-119, § 2(k), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(h), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(p), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$500”.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1704. Gaming; setting up gaming table; inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised,

and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01. For the purposes of this section, the term “gambling device” shall not include slot machines manufactured before 1952, intended for exhibition or private use by the owner, and not used for gambling purposes. The term “slot machine” means a mechanical device, an essential part of which is a drum or reel which bears an insignia and which when operated may deliver, as a result of the application of an element of chance, a token, money, or property, or by operation of which a person may become entitled to receive, as a result of this application of an element of chance, a token, money, or property.

(Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 865; Jan. 26, 1982, D.C. Law 4-59, § 2, 28 DCR 4766; June 11, 2013, D.C. Law 19-317, § 303(p), 60 DCR 2064.)

Section references. — This section is referenced in § 22-1702, § 22-1705, and § 22-1707.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added “and, in addition, may be fined not more than the amount set forth in § 22-3571.01” at the end of the first sentence.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1705. Gambling premises; definition; prohibition against maintaining; forfeiture; liens; deposit of moneys in Treasury; penalty; subsequent offenses.

(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the District of Columbia, used or to be used in violating the provisions of § 22-1701 or § 22-1704, shall be deemed “gambling premises” for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain, or aid, or permit the maintaining of any gambling premises.

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used: (1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of § 22-1701; (2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of § 22-1704; or (3) in maintaining any gambling premises; shall be subject to seizure by any designated civilian employee of the Metropolitan Police Department or any member of the Metropolitan Police force, or the United States Park Police, or the United States Marshal, or any Deputy

Marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Mayor of the District of Columbia may, by order or by regulation, provide; provided, that if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the General fund of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

(d) Whoever violates this section shall be imprisoned not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted of a violation of this section, in which case the person may be imprisoned for not more than 5 years, or fined not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 866; June 29, 1953, 67 Stat. 95, ch. 159, § 206(b); Sept. 21, 1961, 75 Stat. 540, Pub. L. 87-259, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); May 21, 1994, D.C. Law 10-119, § 2(l), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(i), 41 DCR 2608; June 12, 1999, D.C. Law 12-284, § 4, 46 DCR 1328; Sept. 14, 2011, D.C. Law 19-21, § 9045, 58 DCR 6226; June 11, 2013, D.C. Law 19-317, § 201(q), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317, in (d), substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” and the second occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$2,000”.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1706. Three-card monte and confidence games.

Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known as 3-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not more than the amount set forth in § 22-3571.01 and by imprisonment for not more than 180 days.

(Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 867; Aug. 20, 1994, D.C. Law 10-151, § 105(j), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(r), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1708. Gambling pools and bookmaking; athletic contest defined.

It shall be unlawful for any person, or association of persons, within the District of Columbia to purchase, possess, own, or acquire any chance, right, or interest, tangible or intangible, in any policy lottery or any lottery, or to make or place a bet or wager, accept a bet or wager, gamble or make books or pools on the result of any athletic contest. For the purpose of this section, the term “athletic contest” means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis, golf, or wrestling match, or a tennis or golf tournament, or a prize fight or boxing match, or a trotting or running race of horses, or a running race of dogs, or any other athletic or sporting event or contest. Any person or association of persons violating this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1331, ch. 854, § 869; May 16, 1908, 35 Stat. 164, ch. 172, § 3; June 29, 1953, 67 Stat. 96, ch. 159, § 206c; Aug. 20, 1994, D.C. Law 10-151, § 105(k), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(s), 60 DCR 2064.)

Section references. — This section is referenced in § 22-1702.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” and for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1713. Corrupt influence in connection with athletic contests.

(a) It shall be unlawful to pay or give, or to agree to pay or give, or to promise or offer, any valuable thing to any individual:

(1) With intent to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit such individual or his or her team’s margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) With intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause:

(A) The loss of such athletic contest by such contestant, participant, or team; or

(B) The margin of victory or score of such contestant, participant, or team to be limited; or

(3) With intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause:

(A) The loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or

(B) The margin of victory or score of any such contestant, participant, or team to be limited.

(b) It shall be unlawful for any individual to solicit or accept, or to agree to accept, any valuable thing or a promise or offer of any valuable thing:

(1) To influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit such individual or his or her team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) To influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause:

(A) The loss of such athletic contest by such contestant, participant, or team; or

(B) The margin of victory or score of such contestant, participant, or team to be limited; or

(3) To influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause:

(A) The loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or

(B) The margin of victory or score of any such contestant, participant, or team to be limited.

(c) Whoever violates any provision of subsection (a) of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not less than 1 year nor more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

(d) Whoever violates any provision of subsection (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than 1 year and by a fine of not more than the amount set forth in § 22-3571.01.

(e) As used in this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis or wrestling match, or a prize fight or boxing match, or a horse race or any other athletic or sporting event or contest.

(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or

professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his or her duties.

(Mar. 3, 1901, ch. 854, § 869e; July 11, 1947, 61 Stat. 313, ch. 230; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 604; May 21, 1994, D.C. Law 10-119, § 2(n), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 201(t), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (c) and for “not more than \$5,000” in (d).

Legislative history of Law 19-317. — See note to § 22-1701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 18. GENERAL OFFENSES.

Sec.
22-1803. Attempts to commit crime.
22-1804a. Penalty for felony after at least 2
prior felony convictions.
22-1805a. Conspiracy to commit crime.

Sec.
22-1807. Punishment for offenses not covered
by provisions of Code.
22-1810. Threatening to kidnap or injure a
person or damage his property.

§ 22-1803. Attempts to commit crime.

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321), shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 180 days, or both. Except, whoever shall attempt to commit a crime of violence as defined in § 23-1331 shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 5 years, or both.

(Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 906; Aug. 20, 1994, D.C. Law 10-151, § 105(a), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(y), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 22-3231, § 22-3232, and § 22-4001.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000” and the second occurrence of “not more than the amount set forth in § 22-3571.01” for “not exceeding \$5,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Robbery.

Evidence was sufficient to support defendant's conviction for attempted robbery under D.C. Code §§ 22-2802 and 22-1803 because the victim testified that defendant walked into her bedroom, high on PCP, demanded money, and

pulled out a gun. During the ensuing fight, defendant threw the victim against the wall and flipped her mattress while looking for money; these actions established each element of attempted robbery. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

§ 22-1804a. Penalty for felony after at least 2 prior felony convictions.

(a)(1) If a person is convicted in the District of Columbia of a felony, having previously been convicted of 2 prior felonies not committed on the same occasion, the court may, in lieu of any sentence authorized, impose such greater term of imprisonment as it deems necessary, up to, and including, 30 years.

(2) If a person is convicted in the District of Columbia of a crime of violence as defined by § 22-4501, having previously been convicted of 2 prior crimes of violence not committed on the same occasion, the court, in lieu of the term of imprisonment authorized, shall impose a term of imprisonment of not less than 15 years and may impose such greater term of imprisonment as it deems necessary up to, and including, life without possibility of release.

(3) For purposes of imprisonment following revocation of release authorized by § 24-403.01, the third or subsequent felony committed by a person who had previously been convicted of 2 prior felonies not committed on the same occasion and the third or subsequent crime of violence committed by a person who had previously been convicted of 2 prior crimes of violence not committed on the same occasion are Class A felonies.

(b) For the purposes of this section:

(1) A person shall be considered as having been convicted of a felony if the person was convicted of a felony by a court of the District of Columbia, any state, or the United States or its territories; and

(2) A person shall be considered as having been convicted of a crime of violence if the person was convicted of a crime of violence as defined by § 22-4501, by a court of the District of Columbia, any state, or the United States or its territories.

(c)(1) A person shall be considered as having been convicted of 2 felonies if the person has been convicted of a felony twice before on separate occasions by courts of the District of Columbia, any state, or the United States or its territories.

(2) A person shall be considered as having been convicted of 2 crimes of violence if the person has twice before on separate occasions been convicted of a crime of violence as defined by § 22-4501, by courts of the District of Columbia, any states, or the United States or its territories.

(d) No conviction or plea of guilty with respect to which a person has been pardoned shall be taken into account in applying this section.

(e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, ch. 854, § 907a; July 29, 1970, 84 Stat. 599, Pub. L. 91-358, title II, § 201(b); May 21, 1994, D.C. Law 10-119, § 2(b), 41 DCR 1639; Oct. 7, 1994, D.C. Law 10-194, § 2, 41 DCR 4283; May 16, 1995, D.C. Law 10-255, § 15, 41 DCR 5193; June 3, 1997, D.C. Law 11-275, § 2, 44 DCR 1408; June 8, 2001, D.C. Law 13-302, § 4(h), 47 DCR 7249; Dec. 10, 2009, D.C. Law 18-88, § 208, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 303(t), 60 DCR 2064.)

Section references. — This section is referenced in § 16-710 and § 24-403.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (e).

Legislative history of Law 19-317. — See note to § 22-1803.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1805. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

CASE NOTES

Applied in *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 22-1805a. Conspiracy to commit crime.

(a)(1) If 2 or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than 5 years, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.

(2) If 2 or more persons conspire to commit a crime of violence as defined in § 23-1331(4), each shall be fined not more than the amount set forth in § 22-3571.01 nor the maximum fine prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or imprisoned not more than 15 years nor the maximum imprisonment prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or both.

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by 1 of the conspirators pursuant to the conspiracy and to effect its purpose.

(c) When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if:

(1) Such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein; or

(2) Such conduct would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia even if performed outside the District of Columbia.

(d) A conspiracy contrived in another jurisdiction to engage in conduct within the District of Columbia which would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia if performed within the District of Columbia is a violation of this section when an overt act pursuant to the conspiracy is committed within the District of Columbia. Under such circumstances, it is immaterial and no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction.

(Mar. 3, 1901, ch. 854, § 908A; July 29, 1970, 84 Stat. 599, Pub. L. 91-358, title II, § 202; Dec. 10, 2009, D.C. Law 18-88, § 209, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 201(z), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 22-4001.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (a)(1) and for “not more than \$3000” in (a)(2).

Legislative history of Law 19-317. — See note to § 22-1803.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Weight and sufficiency of evidence.

Defendant’s convictions of obstruction of justice and conspiracy to obstruct justice were reversed, as no rational juror could have found beyond a reasonable doubt that defendant, acting through and conspiring with his father and

his uncle, had the specific intent to threaten his friend to prevent him from giving truthful testimony at defendant’s murder trial. *Harrison v. United States*, — A.3d —, 2012 D.C. App. LEXIS 636 (Dec. 20, 2012).

§ 22-1807. Punishment for offenses not covered by provisions of Code.

Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this Code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 5 years, or both.

(Mar. 3, 1901, 31 Stat. 1337, ch. 854, § 910; June 11, 2013, D.C. Law 19-317, § 201(aa), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000”.

Legislative history of Law 19-317. — See note to § 22-1803.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-1810. Threatening to kidnap or injure a person or damage his property.

Whoever threatens within the District of Columbia to kidnap any person or to injure the person of another or physically damage the property of any person or of another person, in whole or in part, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 20 years, or both.

(June 19, 1968, 82 Stat. 238, Pub. L. 90-351, title X, § 1502; June 11, 2013, D.C. Law 19-317, § 223, 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000”.

Legislative history of Law 19-317. — See note to § 22-1803.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 18A. HUMAN TRAFFICKING.

Sec.
22-1837. Penalties.

§ 22-1837. Penalties.

(a)(1) Except as provided in paragraph (2) of this subsection, whoever violates § 22-1832, § 22-1833, or § 22-1834 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 20 years, or both.

(2) Whoever violates sections § 22-1832, § 22-1833, or § 22-1834 when the victim is held or provides services for more than 180 days shall be fined not more than 1½ times the maximum fine authorized for the designated act, imprisoned for not more than 1½ times the maximum term authorized for the designated act, or both.

(b) Whoever violates § 22-1835 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both.

(c) Whoever violates § 22-1836 shall be fined or imprisoned up to the maximum fine or term of imprisonment for a violation of each referenced section.

(d) Whoever attempts to violate § 22-1832, § 22-1833, § 22-1834, § 22-1835 or § 22-1836 shall be fined not more than ½ the maximum fine otherwise authorized for the offense, imprisoned for not more than ½ the maximum term otherwise authorized for the offense, or both.

(e) No person shall be sentenced consecutively for violations of §§ 22-1833 and 22-1834 for an offense arising out of the same incident.

(Oct. 23, 2010, D.C. Law 18-239, § 107, 57 DCR 5405; June 11, 2013, D.C. Law 19-317, § 224, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$200,000” in (a)(1), and for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 19. INCEST.

Sec.

22-1901. Definition and penalty.

§ 22-1901. Definition and penalty.

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than 12 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 875; June 11, 2013, D.C. Law 19-317, § 303(r), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4001 and § 23-113.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 19A. INTERFERING WITH REPORTS OF CRIME.

Sec.

22-1931. Obstructing, preventing, or interfering with reports to or requests for

assistance from law enforcement agencies, medical providers, or child welfare agencies.

§ 22-1931. Obstructing, preventing, or interfering with reports to or requests for assistance from law enforcement agencies, medical providers, or child welfare agencies.

(a) It shall be unlawful for a person to knowingly disconnect, damage, disable, temporarily or permanently remove, or use physical force or intimidation to block access to any telephone, radio, computer, or other electronic communication device with a purpose to obstruct, prevent, or interfere with:

(1) The report of any criminal offense to any law enforcement agency;

(2) The report of any bodily injury or property damage to any law enforcement agency;

(3) A request for ambulance or emergency medical assistance to any governmental agency, or any hospital, doctor, or other medical service provider, or

(4) The report of any act of child abuse or neglect to a law enforcement or child welfare agency.

(b) A person who violates subsection (a) of this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(Apr. 24, 2007, D.C. Law 16-306, § 107, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 20. KIDNAPPING.

Sec.

22-2001. Definition and penalty; conspiracy.

§ 22-2001. Definition and penalty; conspiracy.

Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction thereof, be punished by imprisonment for not more than 30 years. For purposes of imprisonment following revocation of release authorized by § 24-403.01, the offense defined by this section is a Class A felony. This section

shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia. If 2 or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and 1 or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 812; Feb. 18, 1933, 47 Stat. 858, ch. 103; Nov. 8, 1965, 79 Stat. 1307, Pub. L. 89-347, § 3; June 8, 2001, D.C. Law 13-302, § 4(g), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 303(i), 60 DCR 2064.)

Section references. — This section is referenced in § 11-502, § 22-3152, § 22-4001, § 23-546, and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 21. MURDER; MANSLAUGHTER.

Sec.

22-2104. Penalty for murder in first and second degrees.

22-2105. Penalty for manslaughter.

Sec.

22-2106. Murder of law enforcement officer.

22-2107. Penalty for solicitation of murder or other crime of violence.

§ 22-2104. Penalty for murder in first and second degrees.

(a) The punishment for murder in the first degree shall be not less than 30 years nor more than life imprisonment without release, except that the court may impose a prison sentence in excess of 60 years only in accordance with § 22-2104.01 or § 24-403.01(b-2). The prosecution shall notify the defendant in writing at least 30 days prior to trial that it intends to seek a sentence of life imprisonment without release as provided in § 22-2104.01; provided that, no person who was less than 18 years of age at the time the murder was committed shall be sentenced to life imprisonment without release.

(b) Notwithstanding any other provision of law, a person convicted of murder in the first degree shall not be released from prison prior to the expiration of 30 years from the date of the commencement of the sentence.

(c) Whoever is guilty of murder in the second degree shall be sentenced to a period of incarceration of not more than life, except that the court may impose a prison sentence in excess of 40 years only in accordance with § 24-403.01(b-2).

(d) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the first degree and murder in the second degree are Class A felonies.

(e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 801; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; Mar. 22, 1962, 76 Stat. 46, Pub. L. 87-423, § 1; Feb. 26, 1981, D.C. Law 3-113, § 2, 27 DCR 5624; Sept. 26, 1992, D.C. Law 9-153, § 2(b), (c), 39 DCR 3868; May 23, 1995, D.C. Law 10-256, § 2(a), 42 DCR 20; June 8, 2001, D.C. Law 13-302, § 4(d), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 303(a), 60 DCR 2064.)

Section references. — This section is referenced in § 22-2104.01, § 22-4502, § 24-112, and § 24-221.06.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (e).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Juvenile and youthful offenders.
Sentence held not excessive.

Juvenile and youthful offenders.

Defendant’s mandatory 30-year sentence under former D.C. Code Ann. § 22-2404(a) (1981 Ed.), now codified at D.C. Code § 22-2104, for a first-degree murder he committed as a juvenile did not violate the Eighth Amendment, U.S. Const. amend. VIII as defendant did not fit within the categorical exceptions of *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), as he was not sentenced to death, he committed homicide, and his sentence did not guarantee that he would die in prison. *James v. United States*, — A.3d —, 2013 D.C. App. LEXIS 21 (Jan. 24, 2013).

Mandatory nature of defendant’s sentence under D.C. Code Ann. § 22-2404(a) (1981 Ed.), now codified at D.C. Code § 21-2104, for a first-degree murder he committed as a juvenile

did not violate the Eighth Amendment, U.S. Const. amend. VIII, as the mitigating qualities of defendant’s youth were taken into account and limited the minimum sentence to 30 years’ for offenders under the age of 18 at the time of their offense, as opposed to the life imprisonment without opportunity for release that was available against adults. *James v. United States*, — A.3d —, 2013 D.C. App. LEXIS 21 (Jan. 24, 2013).

Sentence held not excessive.

Defendant’s mandatory 30-year sentence for a first-degree murder he committed as a juvenile was not grossly disproportionate for Eighth Amendment, U.S. Const. amend. VIII, purposes where defendant kidnapped a 12-year-old boy, drove to an apartment, retrieved a gun, drove to the woods, marched the boy into the middle of the woods, and shot him twice, once in the leg and once in the back of the head in an execution style murder. *James v. United States*, — A.3d —, 2013 D.C. App. LEXIS 21 (Jan. 24, 2013).

§ 22-2105. Penalty for manslaughter.

Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 802; May 23, 1995, D.C. Law 10-256, § 2(c), 42 DCR 20; June 11, 2013, D.C. Law 19-317, § 303(b), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3152, § 24-112, and § 50-2206.51.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-2104.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2106. Murder of law enforcement officer.

(a) Whoever, with deliberate and premeditated malice, and with knowledge or reason to know that the victim is a law enforcement officer or public safety employee, kills any law enforcement officer or public safety employee engaged in, or on account of, the performance of such officer's or employee's official duties, is guilty of murder of a law enforcement officer or public safety employee, and shall be sentenced to life without the possibility of release. It shall not be a defense to this charge that the victim was acting unlawfully by seizing or attempting to seize the defendant or another person.

(b) For the purposes of subsection (a) of this section, the term:

(1) "Law enforcement officer" means:

(A) A sworn member of the Metropolitan Police Department;

(B) A sworn member of the District of Columbia Protective Services;

(C) The Director, deputy directors, and officers of the District of Columbia Department of Corrections;

(D) Any probation, parole, supervised release, community supervision, or pretrial services officer of the Court Services and Offender Supervision Agency or The Pretrial Services Agency;

(E) Metro Transit police officers; and

(F) Any federal, state, county, or municipal officer performing functions comparable to those performed by the officers described in subparagraphs (A), (C), (D), (E), and (F) of this paragraph, including but not limited to state, county, or municipal police officers, sheriffs, correctional officers, parole officers, and probation and pretrial service officers.

(2) "Public safety employee" means:

(A) A District of Columbia firefighter, emergency medical technician/paramedic, emergency medical technician/intermediate paramedic, or emergency medical technician; and

(B) Any federal, state, county, or municipal officer performing functions comparable to those performed by the District of Columbia employees described in subparagraph (A) of this paragraph.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 802a, as added May 23, 1995, D.C. Law 10-256, § 2(d), 42 DCR 20; Oct. 17, 2002, D.C. Law 14-194, § 154, 49 DCR 5306; June 11, 2013, D.C. Law 19-317, § 303(c), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3152, § 23-113, § 24-112, and § 24-403.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — See note to § 22-2104.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2107. Penalty for solicitation of murder or other crime of violence.

(a) Whoever is guilty of soliciting a murder, whether or not such murder occurs, shall be sentenced to a period of imprisonment not exceeding 20 years, a fine not more than the amount set forth in § 22-3571.01, or both.

(b) Whoever is guilty of soliciting a crime of violence as defined by § 23-1331(4), whether or not such crime occurs, shall be sentenced to a period of imprisonment not exceeding 10 years, a fine of not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, ch. 854, § 802b, as added Apr. 24, 2007, D.C. Law 16-306, § 209, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 201(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “of \$20,000” in (a) and for “of \$10,000” in (b).

Legislative history of Law 19-317. — See note to § 22-2104.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 22. OBSCENITY.

Sec.
22-2201. Certain obscene activities and conduct declared unlawful; defini-

tions; penalties; affirmative defenses; exception.

§ 22-2201. Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception.

(a)(1) It shall be unlawful in the District of Columbia for a person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) To present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) To pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) To create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) To advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) To advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than 3 copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1) of this subsection, which were named in the charge against such person and which were found in the possession or under the control of such person at the time of such person's arrest.

(b)(1) It shall be unlawful in the District of Columbia for any person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor:

(i) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) Any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(B) To exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is

exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of 17 years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of:

(i) The character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

(ii) The age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the 1st offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. A person convicted of a 2nd or subsequent offense under subsection (a) or (b) of this section shall be fined not less than \$1,000 and not more than the amount set forth in § 22-3571.01 or imprisoned not less than 6 months or more than 3 years, or both.

(Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872; Dec. 27, 1967, 81 Stat. 738, Pub. L. 90-226, title VI, § 606; May 21, 1994, D.C. Law 10-119, § 2(p), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(m), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(u), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4001 and § 22-4151.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (e), substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” and substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$5,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 23. PANHANDLING.

Sec.

22-2304. Penalties.

§ 22-2304. Penalties.

(a) Any person convicted of violating any provision of § 22-2302 shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 90 days or both.

(b) In lieu of or in addition to the penalty provided in subsection (a) of this section, a person convicted of violating any provision of § 22-2302 may be required to perform community service as provided in § 16-712.

(Nov. 17, 1993, D.C. Law 10-54, § 5, 40 DCR 5450; June 11, 2013, D.C. Law 19-317, § 225, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012; and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 24. PERJURY, RELATED OFFENSES.

Sec.

22-2402. Perjury.

22-2403. Subornation of perjury.

Sec.

22-2404. False swearing.

22-2405. False statements.

§ 22-2402. Perjury.

(a) A person commits the offense of perjury if:

(1) Having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered, that he or she will testify, declare, depose, or certify truly,

or that any written testimony, declaration, deposition, or certificate by that person subscribed is true, wilfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true;

(2) As a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement; or

(3) In any declaration, certificate, verification, or statement made under penalty of perjury in the form specified in § 16-5306 or 28 U.S.C. § 1746(2), the person willfully states or subscribes as true any material matter that the person does not believe to be true and that in fact is not true.

(b) Any person convicted of perjury shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 401, 29 DCR 3976; July 23, 2010, D.C. Law 18-191, § 3, 57 DCR 3400; June 11, 2013, D.C. Law 19-317, § 205(x), 60 DCR 2064.)

Section references. — This section is referenced in § 2-1831.13, § 4-804, § 7-2502.05, § 7-2502.11, and § 7-2504.09.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2403. Subornation of perjury.

A person commits the offense of subornation of perjury if that person wilfully procures another to commit perjury. Any person convicted of subornation of perjury shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 402, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(y), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000”.

Legislative history of Law 19-317. — See note to § 22-2402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2404. False swearing.

(a) A person commits the offense of false swearing if under oath or affirmation he or she wilfully makes a false statement, in writing, that is in

fact material and the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(b) Any person convicted of false swearing shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.

(Dec. 1, 1982, D.C. 4-164, § 403, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(z), 60 DCR 2064.)

Section references. — This section is referenced in § 2-1831.13.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$2,500” in (b).

Legislative history of Law 19-317. — See note to § 22-2402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2405. False statements.

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true; provided, that the writing indicates that the making of a false statement is punishable by criminal penalties or if that person makes an affirmation by signing an entity filing or other document under Title 29 of the District of Columbia Official Code, knowing that the facts stated in the filing are not true in any material respect or if that person makes an affirmation by signing a declaration under § 1-1061.13, knowing that the facts stated in the filing are not true in any material respect;

(b) Any person convicted of making false statements shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both. A violation of this section shall be prosecuted by the Attorney General for the District of Columbia or one of the Attorney General’s assistants.

(Dec. 1, 1982, D.C. Law 4-164, § 404, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(e), 41 DCR 2608; July 2, 2011, D.C. Law 18-378, § 3(e), 58 DCR 1720; June 5, 2012, D.C. Law 19-137, § 121(b), 59 DCR 2542; June 11, 2013, D.C. Law 19-317, § 205(aa), 60 DCR 2064.)

Section references. — This section is referenced in § 4-251.03, § 4-1501.09, § 42-1102, § 47-3504, and § 47-3506.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — See note to § 22-2402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 25. POSSESSION OF IMPLEMENTS OF CRIME.

Sec.

22-2501. Possession of implements of crime;
penalty.

§ 22-2501. Possession of implements of crime; penalty.

No person shall have in his or her possession in the District any instrument, tool, or implement for picking locks or pockets, with the intent to use such instrument, tool, or implement to commit a crime. Whoever violates this section shall be imprisoned for not more than 180 days and may be fined not more than and, in addition, may be fined not more than the amount set forth in § 22-3571.01, unless the violation occurs after he or she has been convicted in the District of a violation of this section or of a felony, either in the District or another jurisdiction, in which case he or she shall be imprisoned for not less than one year nor more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

(June 29, 1953, 67 Stat. 97, ch. 159, § 209(a); Aug. 5, 1981, D.C. Law 4-29, § 604(a)(2), 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(g), 28 DCR 4348; May 21, 1994, D.C. Law 10-119, § 9(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 110(b), 41 DCR 2608; June 3, 1997, D.C. Law 11-275, § 11, 44 DCR 1408; June 11, 2013, D.C. Law 19-317, §§ 202(b), 305, 60 DCR 2064.)

Section references. — This section is referenced in § 24-403 and § 24-403.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”; and added “and, in addition, may be fined not more than the amount set forth in § 22-3571.01” at the end of the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 25A. PRESENCE IN A MOTOR VEHICLE CONTAINING A FIREARM.

Sec.

22-2511. Presence in a motor vehicle containing a firearm.

§ 22-2511. Presence in a motor vehicle containing a firearm.

(a) It is unlawful for a person to be voluntarily in a motor vehicle if that person knows that a firearm is in the vehicle, unless the firearm is being lawfully carried or lawfully transported.

(b) It shall be an affirmative defense to this offense, which the defendant must prove by a preponderance of the evidence, that the defendant, upon

learning that a firearm was in the vehicle, had the specific intent to immediately leave the vehicle, but did not have a reasonable opportunity under the circumstances to do so.

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section shall be fined not more than and, in addition, may be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both.

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of § 22-4504(a), or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than and, in addition, may be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both.

(3) No person shall be sentenced consecutively for this offense and any other firearms offense arising out of the same incident. Any conviction under this section and any conviction for carrying or possessing the same firearm on the same occasion shall be considered as one conviction for purposes of any application of repeat offender sentencing provisions.

(Dec. 10, 2009, D.C. Law 18-88, § 101, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 213(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (c)(1), and for “\$10,000” in (c)(2).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 26. PRISON MISCONDUCT.

Subchapter I. Escape

Sec.

22-2601. Escape from institution or officer.

Subchapter III. Introduction of Contraband into Penal Institution

22-2603.03. Penalties.

Subchapter I. Escape.

§ 22-2601. Escape from institution or officer.

(a) No person shall escape or attempt to escape from:

(1) Any penal or correctional institution or facility in which that person is confined pursuant to an order issued by a court of the District of Columbia;

(2) The lawful custody of an officer or employee of the District of Columbia or of the United States; or

(3) An institution or facility, whether located in the District of Columbia or elsewhere, in which a person committed to the Department of Youth Rehabilitation Services is placed.

(b) Any person who violates subsection (a) of this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, said sentence to begin, if the person is an escaped prisoner, upon the expiration of the original sentence or disposition for the offense for which he or she was confined, committed, or in custody at the time of his or her escape.

(July 15, 1932, 47 Stat. 698, ch. 492, § 8; June 6, 1940, 54 Stat. 243, ch. 254, § 6(a); July 29, 1970, 84 Stat. 574, Pub. L. 91-358, title I, § 157(b); Aug. 20, 1994, D.C. Law 10-151, § 203, 41 DCR 2608; June 3, 2011, D.C. Law 18-377, § 9, 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 226, 60 DCR 2064; June 19, 2013, D.C. Law 19-320, § 105, 60 DCR 3390.)

Section references. — This section is referenced in § 24-112 and § 24-407.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (b).

The 2013 amendment by D.C. Law 19-320, in (a)(1), substituted “penal or correctional institution” for “penal institution” and deleted “judge, or commissioner” following “court”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was

assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Applied in *Spriggs v. United States*, 52 A.3d 878, 2012 D.C. App. LEXIS 478 (2012).

Subchapter III. Introduction of Contraband into Penal Institution.

§ 22-2603.03. Penalties.

(a) A person convicted of violating this subchapter with regard to Class A contraband shall be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

(b) A person convicted of violating this subchapter with regard to Class B contraband shall be imprisoned for not more than 2 years, fined not more than the amount set forth in § 22-3571.01, or both.

(c) A person convicted of violating § 22-2603.02(c) shall be imprisoned for not more than 1 year, fined not more than the amount set forth in § 22-3571.01, or both.

(d) Any term of imprisonment imposed on an inmate or prisoner pursuant to this section shall be:

(1) Consecutive to the term of imprisonment being served at the time this offense was committed; or

(2) If the inmate was confined pending trial or sentencing, consecutive to any term of imprisonment imposed in the case in which the inmate was being detained at the time this offense was committed.

(e) The violation of this subchapter with regard to Class C contraband shall be an administrative penalty prescribed by the Department of Corrections or the Department of Youth Rehabilitation Services.

(Dec. 15, 1941, 55 Stat. 800, ch. 572, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, 84 Stat. 572, Pub. L. 91-358, title I, § 155(c)(30); redesignated § 4, Dec. 10, 2009, D.C. Law 18-88, § 210, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 227, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (a), for “not more than \$2,000” in (b), and for “not more than \$1,000” in (c).

Legislative history of Law 19-317. — See note to § 22-2601.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 27. PROSTITUTION; PANDERING.

Subchapter I. General

Sec.

22-2701. Engaging in prostitution or soliciting for prostitution.

22-2704. Abducting or enticing child from his or her home for purposes of prostitution; harboring such child.

22-2705. Pandering; inducing or compelling an individual to engage in prostitution.

22-2706. Compelling an individual to live life of prostitution against his or her will.

22-2707. Procuring; receiving money or other valuable thing for arranging assignation.

Sec.

22-2708. Causing spouse or domestic partner to live in prostitution.

22-2709. Detaining an individual in disorderly house for debt there contracted.

22-2710. Procuring for house of prostitution.

22-2711. Procuring for third persons.

22-2712. Operating house of prostitution.

22-2716. Violation of injunction granted under § 22-2714.

22-2722. Keeping bawdy or disorderly houses.

Subchapter II. Prostitution Free Zones

22-2731. Prostitution free zone; penalty.

Subchapter I. General.

§ 22-2701. Engaging in prostitution or soliciting for prostitution.

(a) It is unlawful for any person to engage in prostitution or to solicit for prostitution.

(b)(1) Except as provided in paragraph (2) of this subsection, a person convicted of prostitution or soliciting for prostitution shall be:

(A) Fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both, for the first offense; and

(B) Fined not more than the amount set forth in § 22-3571.01, imprisoned not more than 180 days, or both, for the second offense.

(2) A person convicted of prostitution or soliciting for prostitution who has 2 or more prior convictions for prostitution or soliciting for prostitution, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 2 years, or both.

(c) For the purposes of this section, a person shall be considered as having 2 or more prior convictions for prostitution or soliciting for prostitution if he or she has been convicted on at least 2 occasions of violations of:

(1) This section;

(2) A statute in one or more other jurisdictions prohibiting prostitution or soliciting for prostitution; or

(3) Conduct that would constitute a violation of this section if committed in the District of Columbia.

(Aug. 15, 1935, 49 Stat. 651, ch. 546, § 1; June 9, 1948, 62 Stat. 346, ch. 428, title I, § 102; June 29, 1953, 67 Stat. 93, ch. 159, § 202(b); Dec. 10, 1981, D.C. Law 4-57, § 3, 28 DCR 4652; Nov. 21, 1985, D.C. Law 6-62, § 2, 32 DCR 4581; Dec. 1, 1987, D.C. Law 7-44, § 2, 34 DCR 5310; May 24, 1996, D.C. Law 11-130, § 3(a), 43 DCR 1570; Apr. 24, 2007, D.C. Law 16-306, § 211(a), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 211, 56 DCR 7413; Apr. 20, 2012, D.C. Law 19-120, § 202, 58 DCR 11235; June 11, 2013, D.C. Law 19-317, § 228, 60 DCR 2064.)

Section references. — This section is referenced in § 22-1831, § 22-2701.01, § 22-2703, § 22-2723, § 22-2731, § 22-4001, § 42-3101, and § 47-2844.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (b)(1)(A), for “not more than \$1,000” in (b)(1)(B), and for “not more than \$4,000” in (b)(2).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2704. Abducting or enticing child from his or her home for purposes of prostitution; harboring such child.

(a) It is unlawful for any person, for purposes of prostitution, to:

(1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child’s parents or guardian; or

(2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child’s parents or guardian.

(b) A person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years, or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 813; May 21, 1994, D.C. Law 10-119, § 2(q), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 213, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 201(g), 60 DCR 2064.)

Section references. — This section is referenced in § 14-311, § 22-1831, § 22-2701.01, § 22-2731, § 22-3020.51, § 22-4001, § 23-113, and § 42-3101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$20,000” in (b).

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2705. Pandering; inducing or compelling an individual to engage in prostitution.

(a) It is unlawful for any person, within the District of Columbia to:

(1) Place or cause, induce, entice, procure, or compel the placing of any individual in the charge or custody of any other person, or in a house of prostitution, with intent that such individual shall engage in prostitution;

(2) Cause, compel, induce, entice, or procure or attempt to cause, compel, induce, entice, or procure any individual:

(A) To reside with any other person for the purpose of prostitution;

(B) To reside or continue to reside in a house of prostitution; or

(C) To engage in prostitution; or

(3) Take or detain an individual against the individual’s will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.

(b) It is unlawful for any parent, guardian, or other person having legal custody of the person of an individual, to consent to the individual’s being taken, detained, or used by any person, for the purpose of prostitution or a sexual act or sexual contact.

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) or (b) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years, or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) or (b) of this section when the individual so placed, caused, compelled, induced, enticed, procured, taken, detained, or used or attempted to be so placed, caused, compelled, induced, enticed, procured, taken, detained, or used is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(June 25, 1910, 36 Stat. 833; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 1; May 21, 1994, D.C. Law 10-119, § 12(a), 41 DCR 1639; May 17, 1996, D.C. Law 11-119, § 3, 43 DCR 528; Apr. 24, 2007, D.C. Law 16-306, § 214(a), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 229(a), 60 DCR 2064.)

Section references. — This section is referenced in § 14-311, § 22-1831, § 22-2701.01, § 22-2731, § 23-113, and § 42-3101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (c)(1), and for “not more than \$20,000” in (c)(2).

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2706. Compelling an individual to live life of prostitution against his or her will.

(a) It is unlawful for any person, within the District of Columbia, by threats or duress, to detain any individual against such individual’s will, for the purpose of prostitution or a sexual act or sexual contact, or to compel any individual against such individual’s will, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact.

(b)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 15 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) of the section when the individual so detained or compelled is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(June 25, 1910, 36 Stat. 833, ch. 404, § 2; Jan. 3, 1941, 54 Stat. 1225, ch. 936, § 2; May 21, 1994, D.C. Law 10-119, § 12(b), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 214(b), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 229(b), 60 DCR 2064.)

Section references. — This section is referenced in § 14-311 and § 23-113.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$15,000” in (b)(1), and for “not more than \$20,000” in (b)(2).

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2707. Procuring; receiving money or other valuable thing for arranging assignation.

(a) It is unlawful for any person, within the District of Columbia, to receive any money or other valuable thing for or on account of arranging for or causing any individual to engage in prostitution or a sexual act or contact.

(b)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) of this section when the individual so arranged for or caused to engage in prostitution or a sexual act or contact is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(June 25, 1910, 36 Stat. 833, ch. 404, § 3; Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 3; May 21, 1994, D.C. Law 10-119, § 12(c), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 214(c), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 229(c), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (b)(1), and for “not more than \$20,000” in (b)(2).

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2708. Causing spouse or domestic partner to live in prostitution.

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, a spouse or domestic partner in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one year nor more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(June 25, 1910, 36 Stat. 833, ch. 404, § 4; May 21, 1994, D.C. Law 10-119, § 12(d), 41 DCR 1639; June 3, 1997, D.C. Law 11-275, § 6, 44 DCR 1408; Apr. 24, 2007, D.C. Law 16-306, § 214(d), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 306(a), 60 DCR 2064.)

Section references. — This section is referenced in § 14-311 and § 23-113.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2709. Detaining an individual in disorderly house for debt there contracted.

Any person or persons who attempt to detain any individual in a disorderly house or house of prostitution because of any debt or debts such individual has contracted, or is said to have contracted, while living in said house of

prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one year nor more than 5 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(June 25, 1910, 36 Stat. 833, ch. 404, § 5; May 21, 1994, D.C. Law 10-119, § 12(e), 41 DCR 1639; June 3, 1997, D.C. Law 11-275, § 6, 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 306(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2710. Procuring for house of prostitution.

Any person who, within the District of Columbia, shall pay or receive any money or other valuable thing for or on account of the procuring for, or placing in, a house of prostitution, for purposes of sexual intercourse, prostitution, debauchery, or other immoral act, any individual, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

(June 25, 1910, 36 Stat. 833, ch. 404, § 6; as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4; May 21, 1994, D.C. Law 10-119, § 13(a), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 229(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2711. Procuring for third persons.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any individual shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

(June 25, 1910, 36 Stat. 833, ch. 404, § 7; as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4; May 21, 1994, D.C. Law 10-119, § 13(b), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 229(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2712. Operating house of prostitution.

Any person who, within the District of Columbia, knowingly, shall accept, receive, levy, or appropriate any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any individual engaged in prostitution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

(June 25, 1910, 36 Stat. 833, ch. 404, § 8; as added Jan. 3, 1941, 54 Stat. 1226, ch. 936, § 4; May 21, 1994, D.C. Law 10-119, § 12(f), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 229(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2716. Violation of injunction granted under § 22-2714.

In case of the violation of any injunction granted under the provisions of § 22-2714, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than \$200 and not more than the amount set forth in § 22-3571.01 or by imprisonment in the District Jail not less than three nor more than 6 months or by both fine and imprisonment.

(Feb. 7, 1914, 38 Stat. 281, ch. 16, § 4; June 11, 2013, D.C. Law 19-317, § 230, 60 DCR 2064.)

Section references. — This section is referenced in § 22-2717.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-2722. Keeping bawdy or disorderly houses.

Whoever is convicted of keeping a bawdy or disorderly house in the District shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

(July 16, 1912, 37 Stat. 192, ch. 235, § 1; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 11(a); Aug. 20, 1994, D.C. Law 10-151, § 107, 41 DCR 2608; Apr. 24, 2007, D.C. Law 16-306, § 215, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 203(a)(2), 60 DCR 2064.)

Section references. — This section is referenced in § 22-1831, § 22-2701.01, § 22-2731, and § 22-4001.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000”.

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Prostitution Free Zones.

§ 22-2731. Prostitution free zone; penalty.

(a) For the purposes of this section, the term:

(1) “Chief of Police” means the Chief of the Metropolitan Police Department.

(2) “Disperse” means to depart from the designated prostitution free zone and not to reassemble within the prostitution free zone with anyone from the group ordered to depart for the duration of the zone.

(3) “Known participant in prostitution or prostitution-related offenses” means a person who has been convicted in any court in any jurisdiction of any violation involving prostitution or prostitution-related offenses.

(4) “MPD” means the Metropolitan Police Department.

(5) “Prostitution” shall have the same meaning as provided in § 22-2701.01(3).

(6) “Prostitution free zone” means public space or public property in an area not to exceed a square of 1000 feet on each side that is established pursuant to subsection (b) of this section.

(7) “Prostitution-related offenses” means those crimes and offenses defined in § 22-2701, § 22-2703, and § 22-2723, § 22-2701.01, § 22-2704, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722.

(b)(1) The Chief of Police may declare any public area a prostitution free zone for a period not to exceed 480 consecutive hours. The Chief of Police shall inform his commanders, the Mayor, and the Council of the declaration of a prostitution free zone.

(2) In determining whether to designate a prostitution free zone, the Chief of Police shall find the following:

(A) The occurrence of disproportionately high arrests for prostitution or prostitution-related offenses, and calls for police service because of prostitution

or prostitution-related offenses in the proposed prostitution free zone within the preceding 6-month period;

(B) Objective evidence or verifiable information that shows that disproportionately high incidence of prostitution or prostitution-related offenses are occurring on public space or public property within the proposed prostitution free zone; and

(C) Any other verifiable information from which the Chief of Police may ascertain whether the public health or safety is endangered by prostitution or prostitution-related offenses in the prostitution free zone.

(c) Upon the designation of a prostitution free zone, the MPD shall mark each block within the prostitution free zone by using barriers, tape, signs, or police officers that post or announce the following information in the immediate area of, and borders around, the prostitution free zone:

(1) A statement that it is unlawful for a person to congregate in a group of 2 or more persons for the purposes of prostitution or prostitution-related offenses within the boundaries of a prostitution free zone, and fail to disperse after being instructed to disperse by a uniformed officer of the MPD, or a non-uniformed officer of the MPD upon display of MPD identification, who reasonably believes the person is congregating for the purpose of engaging in prostitution or prostitution-related offenses;

(2) The boundaries of the prostitution free zone;

(3) A statement of the effective dates of the prostitution free zone designation; and

(4) Any other additional information the Chief of Police provides.

(d)(1) It shall be unlawful for a person to congregate in a group of 2 or more persons on public space or public property within the perimeter of a prostitution free zone established pursuant to subsection (b) of this section and thereafter to fail to disperse after being instructed to disperse by a uniformed officer of the MPD, or a non-uniformed officer of the MPD upon display of MPD identification, who reasonably believes the person is congregating for the purpose of engaging in prostitution or prostitution-related offenses.

(2) In making a determination that a person is congregating in a prostitution free zone for the purpose of engaging in prostitution or prostitution-related offenses, the totality of the circumstances involved shall be considered. Among the circumstances which may be considered in determining whether such purpose is manifested are:

(A) The conduct of a person being observed, including that such person is behaving in a manner raising a reasonable belief that the person is engaging or is about to engage in prostitution or prostitution-related offenses, such as:

(i) Repeatedly beckoning to, stopping, attempting to stop, or attempting to engage passers-by in conversation for the purpose of prostitution;

(ii) Stopping or attempting to stop motor vehicles for the purpose of prostitution; or

(iii) Repeatedly interfering with the free passage of other persons for the purpose of prostitution;

(B) Information from a reliable source indicating that a person being observed routinely engages in or is currently engaging in prostitution or prostitution-related offenses within the prostitution free zone;

(C) Physical identification by an officer of the person as a member of a gang or association which engages in prostitution or prostitution-related offenses;

(D) Knowledge by an officer that the person is a known participant in prostitution or prostitution-related offenses; and

(E) Knowledge by an officer that any vehicle involved in the observed circumstances is registered to a known participant in prostitution or prostitution-related offenses, or a person for whom there is an outstanding arrest warrant for a crime involving prostitution or prostitution-related offenses.

(e) Any person who violates this section shall, upon conviction, be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 6 months, or both.

(f) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute all violations of this section.

(Apr. 24, 2007, D.C. Law 16-306, § 104, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 212, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 206(c), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (e).

Legislative history of Law 19-317. — See note to § 22-2701.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 27A. PROTEST TARGETING A RESIDENCE.

Sec.

22-2752. Engaging in an unlawful protest targeting a residence.

§ 22-2752. Engaging in an unlawful protest targeting a residence.

(a)(1) It is unlawful for a person, as part of a group of 3 or more persons, to target a residence for purposes of a demonstration:

(A) Between 10:00 p.m. and 7:00 a.m.;

(B) While wearing a mask; or

(C) Without having provided the Metropolitan Police Department notification of the location and approximate time of the demonstration.

(2) The notification required by paragraph (1)(C) of this subsection shall be provided in writing to the operational unit designated for such purpose by the Chief of Police not less than 2 hours before the demonstration begins. The Metropolitan Police Department shall post on its website the e-mail and facsimile number by which the operational unit may be notified 24 hours a day, and the address to which notification may be hand delivered, as an alternative, during business hours.

(b) A person who violates this section shall be guilty of a misdemeanor and, upon conviction, fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days.

(May 26, 2011, D.C. Law 18-374, § 3, 58 DCR 715; June 11, 2013, D.C. Law 19-317, § 231, 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 28. ROBBERY.

Sec.

22-2801. Robbery.

22-2802. Attempt to commit robbery.

Sec.

22-2803. Carjacking.

§ 22-2801. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than 2 years nor more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 810; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 603; June 11, 2013, D.C. Law 19-317, § 303(h), 60 DCR 2064.)

Section references. — This section is referenced in § 11-502, § 22-2802, § 23-546, and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Merger of offenses.

Defendant’s two convictions for possession of a firearm during a crime of violence, under D.C.

Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and

aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was “armed with” or had “readily available” a dangerous weapon, which could, but

need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of “possession” of a “firearm.” *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 22-2802. Attempt to commit robbery.

Whoever attempts to commit robbery, as defined in § 22-2801, by an overt act, shall be imprisoned for not more than 3 years or be fined not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 811; June 11, 2013, D.C. Law 19-317, § 201(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — See note to § 22-2801.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after

CASE NOTES

Weight and sufficiency of evidence.

Evidence was sufficient to support defendant’s conviction for attempted robbery under D.C. Code § 22-2802 and 22-1803 because the victim testified that defendant walked into her bedroom, high on PCP, demanded money, and

pulled out a gun. During the ensuing fight, defendant threw the victim against the wall and flipped her mattress while looking for money; these actions established each element of attempted robbery. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

§ 22-2803. Carjacking.

(a)(1) A person commits the offense of carjacking if, by any means, that person knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempts to do so, shall take from another person immediate actual possession of a person’s motor vehicle.

(2) A person convicted of carjacking shall be fined not more than the amount set forth in § 22-3571.01 and be imprisoned for a mandatory-minimum term of not less than 7 years and a maximum term of not more than 21 years, or both.

(b)(1) A person commits the offense of armed carjacking if that person, while armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switch-blade knife, razor, blackjack, billy, or metallic or other false knuckles), commits or attempts to commit the offense of carjacking.

(2) A person convicted of armed carjacking shall be fined not more than the amount set forth in § 22-3571.01 and be imprisoned for a mandatory-minimum term of not less than 15 years and a maximum term of not more than 40 years, or both. However, the court may impose a prison sentence in excess

of 30 years only in accordance with § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), armed carjacking is a Class A felony.

(c) Notwithstanding any other provision of law, a person convicted of carjacking shall not be released from prison prior to the expiration of 7 years from the date of the commencement of the sentence, and a person convicted of armed carjacking shall not be released from prison prior to the expiration of 15 years from the date of the commencement of the sentence.

(Mar. 3, 1901, ch. 854, § 811a, as added May 8, 1993, D.C. Law 9-270, § 2, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 2, 40 DCR 3416; June 8, 2001, D.C. Law 13-302, § 4(f), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(a), 48 DCR 1873; June 11, 2013, D.C. Law 19-317, § 201(f), 60 DCR 2064.)

Section references. — This section is referenced in § 7-2508.01, § 24-112, § 24-221.06, and § 24-467.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (a)(2) and for “not more than \$10,000” in (b)(2).

Legislative history of Law 19-317. — See note to § 22-2801.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 30. SEXUAL ABUSE.

Subchapter II. Sex Offenses

Sec.

- 22-3002. First degree sexual abuse.
- 22-3003. Second degree sexual abuse.
- 22-3004. Third degree sexual abuse.
- 22-3005. Fourth degree sexual abuse.
- 22-3006. Misdemeanor sexual abuse.
- 22-3008. First degree child sexual abuse.
- 22-3009. Second degree child sexual abuse.
- 22-3009.01. First degree sexual abuse of a minor.
- 22-3009.02. Second degree sexual abuse of a minor.
- 22-3009.03. First degree sexual abuse of a secondary education student.
- 22-3009.04. Second degree sexual abuse of a secondary education student.
- 22-3010. Enticing a child or minor.
- 22-3010.01. Misdemeanor sexual abuse of a child or minor.

Sec.

- 22-3010.02. Arranging for a sexual contact with a real or fictitious child.
- 22-3013. First degree sexual abuse of a ward, patient, client, or prisoner.
- 22-3014. Second degree sexual abuse of a ward, patient, client, or prisoner.
- 22-3015. First degree sexual abuse of a patient or client.
- 22-3016. Second degree sexual abuse of a patient or client.

Subchapter II-A. Reporting Requirements in Child Sexual Abuse Offense Cases

- 22-3020.51. Definitions.
- 22-3020.52. Reporting requirements and privileges.
- 22-3020.53. Defense to non-reporting.
- 22-3020.54. Penalties.
- 22-3020.55. Immunity from liability.

Subchapter II. Sex Offenses.

§ 22-3002. First degree sexual abuse.

(a) A person shall be imprisoned for any term of years or for life, and in addition, may be fined not more than the amount set forth in § 22-3571.01, if

that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

- (1) By using force against that other person;
- (2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;
- (3) After rendering that other person unconscious; or
- (4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.

(b) The court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

(May 23, 1995, D.C. Law 10-257, § 201, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(a), 44 DCR 1408; June 8, 2001, D.C. Law 13-302, § 7(a), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 232(a), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3007, § 22-3010, § 22-4001, § 22-4502, § 23-113, § 24-112, and § 24-403.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$250,000” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Weight and sufficiency of evidence.

— Testimony or statement of accused, weight and sufficiency of evidence.

Weight and sufficiency of evidence.

— **Testimony or statement of accused, weight and sufficiency of evidence.**

Evidence supported defendant’s conviction for attempted first degree sexual abuse based

on the victim’s testimony that the victim heard the victim’s attacker unzip the attacker’s pants, saw the attacker’s torso exposed, felt the attacker pull down the victim’s underwear, and felt the attacker pull the victim’s body from behind toward the attacker’s body while the victim was on the victim’s hands and knees trying to escape. *Gee v. United States*, 54 A.3d 1249, 2012 D.C. App. LEXIS 503 (2012), writ of certiorari denied by 133 S. Ct. 2843, 2013 U.S. LEXIS 4658, 81 U.S.L.W. 3690 (U.S. 2013).

§ 22-3003. Second degree sexual abuse.

A person shall be imprisoned for not more than 20 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

- (1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or

(2) Where the person knows or has reason to know that the other person is:

- (A) Incapable of appraising the nature of the conduct;
- (B) Incapable of declining participation in that sexual act; or
- (C) Incapable of communicating unwillingness to engage in that sexual act.

(May 23, 1995, D.C. Law 10-257, § 202, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(b), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(b), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4001, § 23-113, § 24-112, and § 24-403.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$200,000” in the introductory paragraph.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3004. Third degree sexual abuse.

A person shall be imprisoned for not more than 10 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

- (1) By using force against that other person;
- (2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;
- (3) After rendering that person unconscious; or
- (4) After administering to that person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.

(May 23, 1995, D.C. Law 10-257, § 203, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(c), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(c), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$100,000” in the introductory paragraph.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3005. Fourth degree sexual abuse.

A person shall be imprisoned for not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

(1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or

(2) Where the person knows or has reason to know that the other person is:

(A) Incapable of appraising the nature of the conduct;

(B) Incapable of declining participation in that sexual contact; or

(C) Incapable of communicating unwillingness to engage in that sexual contact.

(May 23, 1995, D.C. Law 10-257, § 204, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(d), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(d), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$50,000” in the introductory paragraph.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Prior offenses.

Trial court erred by admitting evidence of defendant’s conviction in Virginia for sexual assault because defendant’s conduct in the Virginia incident was not directed towards any of the victims in the District of Columbia incidents; while defendant made his state of mind

an issue, the circumstances surrounding the aggravated sexual assault incident in Virginia and the charged crime did not entail a case of peculiar coincidence, in which mere recurrence threw light on mental states. *Thomas v. United States*, — A.3d —, 2013 D.C. App. LEXIS 26 (Jan. 31, 2013).

§ 22-3006. Misdemeanor sexual abuse.

Whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without that other person’s permission, shall be imprisoned for not more than 180 days and, in addition, may be fined in an amount not more than the amount set forth in § 22-3571.01.

(May 23, 1995, D.C. Law 10-257, § 205, 42 DCR 53; June 11, 2013, D.C. Law 19-317, § 232(e), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 22-4151, and § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

Indictment and information.

In prosecution for misdemeanor sexual abuse

of an eight-year-old child, the six-month range the information identified as the time during

which the incident occurred was not overly broad, as the child's youth, defendant's alleged threats, and the traumatic nature of the experience may have made it difficult for her to

recall the precise date of the abuse, and defendant had fair notice of the charges against him. *Lazo v. United States*, 54 A.3d 1221, 2012 D.C. App. LEXIS 501 (2012).

§ 22-3008. First degree child sexual abuse.

Whoever, being at least 4 years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act shall be imprisoned for any term of years or for life and, in addition, may be fined not more than the amount set forth in § 22-3571.01. However, the court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

(May 23, 1995, D.C. Law 10-257, § 207, 42 DCR 53; June 8, 2001, D.C. Law 13-302, § 7(b), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 232(f), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3011, § 22-3012, § 22-4001, § 22-4502, § 23-113, § 24-112, and § 24-403.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “an amount not to exceed \$250,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3009. Second degree child sexual abuse.

Whoever, being at least 4 years older than a child, engages in sexual contact with that child or causes that child to engage in sexual contact shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not more than the amount set forth in § 22-3571.01.

(May 23, 1995, D.C. Law 10-257, § 208, 42 DCR 53; June 11, 2013, D.C. Law 19-317, § 232(g), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$100,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3009.01. First degree sexual abuse of a minor.

Whoever, being 18 years of age or older, is in a significant relationship with a minor, and engages in a sexual act with that minor or causes that minor to engage in a sexual act shall be imprisoned for not more than 15 years and may be fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 208a, as added Apr. 24, 2007, D.C. Law 16-306, § 216(b), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(h), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$150,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3009.02. Second degree sexual abuse of a minor.

Whoever, being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact shall be imprisoned for not more than 7 ½ years and may be fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 208b, as added Apr. 24, 2007, D.C. Law 16-306, § 216(c), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(i), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3010 and § 23-113.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$75,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3009.03. First degree sexual abuse of a secondary education student.

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in a sexual act with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in a sexual act, shall be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 208c, as added Oct. 23, 2010, D.C. Law 18-239, § 204, 57 DCR 5405; June 11, 2013, D.C. Law 19-317, § 232(j), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$100,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3009.04. Second degree sexual abuse of a secondary education student.

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in sexual conduct with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in sexual conduct, shall be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 208d, as added Oct. 23, 2010, D.C. Law 18-239, § 204, 57 DCR 5405; June 11, 2013, D.C. Law 19-317, § 232(k), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$50,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3010. Enticing a child or minor.

(a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 and §§ 22-3008 to 22-3009.02, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01, or both.

(b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01, or both.

(c) No person shall be consecutively sentenced for enticing a child or minor to engage in a sexual act or sexual contact under subsection (a)(2) of this section and engaging in that sexual act or sexual contact with that child or minor, provided, that the enticement occurred closely associated in time with the sexual act or sexual contact.

(May 23, 1995, D.C. Law 10-257, § 209, 42 DCR 53; Apr. 24, 2007, D.C. Law 16-306, § 216(d), 53 DCR 8610; Mar. 25, 2009, D.C. Law 17-353, § 173(b), 56 DCR 1117; June 11, 2013, D.C. Law 19-317, § 232(l), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments.
The 2013 amendment by D.C. Law 19-317

substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$50,000” in (a) and (b).

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3010.01. Misdemeanor sexual abuse of a child or minor.

(a) Whoever, being 18 years of age or older and more than 4 years older than a child, or being 18 years of age or older and being in a significant relationship with a minor, engages in sexually suggestive conduct with that child or minor shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01, or both.

(b) For the purposes of this section, the term “sexually suggestive conduct” means engaging in any of the following acts in a way which is intended to cause or reasonably causes the sexual arousal or sexual gratification of any person:

- (1) Touching a child or minor inside his or her clothing;
- (2) Touching a child or minor inside or outside his or her clothing close to the genitalia, anus, breast, or buttocks;
- (3) Placing one’s tongue in the mouth of the child or minor; or
- (4) Touching one’s own genitalia or that of a third person.

(May 23, 1995, D.C. Law 10-257, § 209a, as added Apr. 24, 2007, D.C. Law 16-306, § 216(e), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(m), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4151 and § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$1,000” in (a).

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3010.02. Arranging for a sexual contact with a real or fictitious child.

(a) It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 209b, as added June 3, 2011, D.C. Law 18-377, § 11(a), 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 232(n), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “an amount not to exceed \$50,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3013. First degree sexual abuse of a ward, patient, client, or prisoner.

Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner, who engages in a sexual act with a ward, patient, client, or prisoner, or causes a ward, patient, client, or prisoner to engage in or submit to a sexual act shall be imprisoned for not more than 10 years or fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 212, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(a), 43 DCR 528; Apr. 24, 2007, D.C. Law 16-306, § 216(g), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(o), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3017, § 23-113, and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$100,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3014. Second degree sexual abuse of a ward, patient, client, or prisoner.

Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner, who engages in a sexual contact with a ward, patient, client, or prisoner, or causes a ward, patient, client, or prisoner, to engage in or submit to a sexual contact shall be imprisoned for not more than 5 years or fined not more than the amount set forth in § 22-3571.01, or both.

(May 23, 1995, D.C. Law 10-257, § 213, 42 DCR 53; Apr. 24, 2007, D.C. Law 16-306, § 216(h), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(p), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$50,000”.

Legislative history of Law 19-317. — See note to § 22-3002.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3015. First degree sexual abuse of a patient or client.

(a) A person is guilty of first degree sexual abuse who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, and engages in a sexual act with another person who is a patient or client of the actor, or is otherwise in a professional relationship of trust with the actor; and

(1) The actor represents falsely that the sexual act is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;

(2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client are such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual act;

(3) The actor represents falsely that he or she is licensed as a particular type of professional; or

(4) The sexual act occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

(b) Any person found guilty pursuant to subsection (a) of this section shall be imprisoned for not more than 10 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

(May 23, 1995, D.C. Law 10-257, § 214, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(b), 43 DCR 528; Apr. 24, 2007, D.C. Law 16-306, § 216(i), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(q), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$100,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3016. Second degree sexual abuse of a patient or client.

(a) A person is guilty of second degree sexual abuse who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, and engages in a sexual contact

with another person who is a patient or client of the actor, or is otherwise in a professional relationship of trust with the actor; and

(1) The actor represents falsely that the sexual contact is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;

(2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client are such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual contact;

(3) The actor represents falsely that he or she is licensed as a particular type of professional; or

(4) The sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

(b) Any person found guilty pursuant to subsection (a) of this section shall be imprisoned for not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

(May 23, 1995, D.C. Law 10-257, § 215, 42 DCR 53; Apr. 24, 2007, D.C. Law 16-306, § 216(j), 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 232(r), 60 DCR 2064.)

Section references. — This section is referenced in § 23-113 and § 24-112.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “in an amount not to exceed \$50,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3002.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3020. Aggravating circumstances.

Section references. — This section is referenced in § 22-3002, § 22-3008, § 22-4502, § 24-112, and § 24-403.01.

CASE NOTES

Other offenses.

Trial court erred by admitting evidence of defendant’s conviction in Virginia for sexual assault because defendant’s conduct in the Virginia incident was not directed towards any of the victims in the District of Columbia incidents; while defendant made his state of mind

an issue, the circumstances surrounding the aggravated sexual assault incident in Virginia and the charged crime did not entail a case of peculiar coincidence, in which mere recurrence threw light on mental states. *Thomas v. United States*, — A.3d —, 2013 D.C. App. LEXIS 26 (Jan. 31, 2013).

Subchapter II-A. Reporting Requirements in Child Sexual Abuse Offense Cases.

§ 22-3020.51. Definitions.

For the purposes of this subchapter, the term:

(1) “Child” means an individual who has not yet attained the age of 16 years.

- (2) "Person" means an individual 18 years of age or older.
- (3) "Police" means the Metropolitan Police Department.
- (4) "Sexual abuse" means any act that is a violation of:
 - (A) Section 22-1834;
 - (B) Section § 22-2704;
 - (C) This chapter (§ 22-3001 et seq.); or
 - (D) Section 22-3102.

(May 23, 1995, D.C. Law 10-257, § 251, as added June 8, 2013, D.C. Law 19-315, § 4, 60 DCR 1702.)

Section references. — This section is referenced in § 2-1831.03 and § 4-1321.02.

Effect of amendments. — The 2013 amendment by D.C. Law 19-315 added this section.

Legislative history of Law 19-315. — Law 19-315, the "Child Sexual Abuse Reporting Amendment Act of 2012," was introduced in

Council and assigned Bill No. 19-647. The Bill was adopted on first and second readings on Nov. 15, 2012 and Dec. 4, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-627 and transmitted to Congress for its review. D.C. Law 19-315 became effective on June 8, 2013.

§ 22-3020.52. Reporting requirements and privileges.

(a) Any person who knows, or has reasonable cause to believe, that a child is a victim of sexual abuse shall immediately report such knowledge or belief to the police. For the purposes of this subchapter, a call to 911, or a report to the Child and Family Services Agency, shall be deemed a report to the police.

(b) Any person who is or has been a victim of sexual abuse is not required to report pursuant to subsection (a) of this section if the identity of the alleged perpetrator matches the identity of the victim's abuser.

(c) No legally recognized privilege, except for the following, shall apply to this subchapter:

(1) A lawyer or a person employed by a lawyer is not required to report pursuant to subsection (a) of this section if the lawyer or employee is providing representation in a criminal, civil, or delinquency matter, and the basis for the knowledge or belief arises solely in the course of that representation.

(2)(A) The notification requirements of subsection (a) of this subsection do not apply to a priest, clergyman, rabbi, or other duly appointed, licensed, ordained, or consecrated minister of a given religion in the District of Columbia, or a duly accredited practitioner of Christian Science in the District of Columbia, if the basis for the knowledge or belief is the result of a confession or penitential communication made by a penitent directly to the minister if:

(i) The penitent made the confession or penitential communication in confidence;

(ii) The confession or penitential communication was made expressly for a spiritual or religious purpose;

(iii) The penitent made the confession or penitential communication to the minister in the minister's professional capacity; and

(iv) The confession or penitential communication was made in the course of discipline enjoined by the church or other religious body to which the minister belongs.

(B) A confession or communication made under any other circumstances does not fall under this exemption.

(d) This section should not be construed as altering the special duty to report by persons specified in § 4-1321.02(b).

(May 23, 1995, D.C. Law 10-257, § 252, as added June 8, 2013, D.C. Law 19-315, § 4, 60 DCR 1702.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-315 added this section.

Legislative history of Law 19-315. — See note to § 22-3020.51.

§ 22-3020.53. Defense to non-reporting.

(a) Any survivor of domestic violence may use such domestic violence as a defense to his or her failure to report under this subchapter.

(b) For the purposes of this section, the term “domestic violence” means intimate partner violence, as defined in § 16-1001(7), and intrafamily violence, as defined in § 16-1001(9).

(May 23, 1995, D.C. Law 10-257, § 253, as added June 8, 2013, D.C. Law 19-315, § 4, 60 DCR 1702.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-315 added this section.

Legislative history of Law 19-315. — See note to § 22-3020.51.

§ 22-3020.54. Penalties.

(a) Any person required to make a report under this subchapter who willfully fails to make such a report shall be subject to a civil fine of \$300.

(b) Adjudication of any infraction of this subchapter shall be handled by the Office of Administrative Hearings pursuant to § 2-1831.03(b-6).

(May 23, 1995, D.C. Law 10-257, § 254, as added June 8, 2013, D.C. Law 19-315, § 4, 60 DCR 1702.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-315 added this section.

Legislative history of Law 19-315. — See note to § 22-3020.51.

§ 22-3020.55. Immunity from liability.

(a) Any person who in good faith makes a report pursuant to this subchapter shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of the report or any participation in any judicial proceeding involving the report. In all civil or criminal proceedings concerning the child or resulting from the report, good faith shall be presumed unless rebutted.

(b) Any person who makes a good-faith report pursuant to this subchapter and, as a result thereof, is discharged from his or her employment or in any other manner discriminated against with respect to compensation, hire, tenure, or terms, conditions, or privileges of employment, may commence a

civil action for appropriate relief. If the court finds that the person is an individual who was required to report, who in good faith made a report, and who was discharged or discriminated against as a result, the court may issue an order granting appropriate relief, including reinstatement with back pay. The District may intervene in any action commenced under this subsection.

(May 23, 1995, D.C. Law 10-257, § 255, as added June 8, 2013, D.C. Law 19-315, § 4, 60 DCR 1702.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-315 added this section. **Legislative history of Law 19-315.** — See note to § 22-3020.51.

CHAPTER 31. SEXUAL PERFORMANCE USING MINORS.

Sec.
22-3103. Penalties.

§ 22-3103. Penalties.

Violation of this chapter shall be a felony and shall be punished by:

- (1) A fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 10 years, or both for the first offense; or
- (2) A fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 20 years, or both for the 2nd and each subsequent offense.

(Mar. 9, 1983, D.C. Law 4-173, § 4, 29 DCR 5749; June 11, 2013, D.C. Law 19-317, § 233, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (1), and for “not more than \$15,000” in (2).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 31A. STALKING.

Sec.
22-3134. Penalties.

§ 22-3134. Penalties.

- (a) Except as provided in subsections (b) and (c) of this section, a person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 12 months, or both.

(b) A person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both, if the person:

(1) At the time, was subject to a court, parole, or supervised release order prohibiting contact with the specific individual;

(2) Has one prior conviction in any jurisdiction of stalking any person within the previous 10 years;

(3) At the time, was at least 4 years older than the specific individual and the specific individual was less than 18 years of age; or

(4) Caused more than \$ 2,500 in financial injury.

(c) A person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, if the person has 2 or more prior convictions in any jurisdiction for stalking any person, at least one of which was for a jury demandable offense.

(d) A person shall not be sentenced consecutively for stalking and identify theft based on the same act or course of conduct.

(Dec. 10, 2009, D.C. Law 18-88, § 504, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 213(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (a), for “not more than \$10,000” in (b), and for “not more than \$25,000” in (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 31B. TERRORISM.

Sec.

22-3154. Manufacture or possession of a weapon of mass destruction.

Sec.

22-3155. Use, dissemination, or detonation of a weapon of mass destruction.

§ 22-3154. Manufacture or possession of a weapon of mass destruction.

(a) A person who manufactures or possesses a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for life.

(b) A person who attempts or conspires to manufacture or possess a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for not more than 30 years.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Oct. 17, 2002, D.C. Law 14-194, § 104, 49 DCR 5306; June 11, 2013, D.C. Law 19-317, § 307(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Constructive possession.

Evidence.

Merger of offenses.

Constructive possession.

Evidence that the truck containing the destructive device belonged to defendant’s girlfriend, that defendant had the keys and registration papers in his pocket when he was arrested, and that he drove the truck on the day in question was sufficient to prove constructive possession. *Gorbey v. United States*, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

Evidence.

Testimony permitting the jury to infer that the device was, within the meaning of D.C. Code § 22-3154(b), a destructive device or weapon capable of causing multiple deaths or serious bodily injuries to multiple persons, and that it was an explosive, bomb, or, at the very least, a combination of parts from which an

explosive or bomb may be readily assembled, and that the components found in the truck constituted a device, instrument, or object designed to explode or produce uncontained combustion, was sufficient to support defendant’s conviction for attempted manufacture or possession of a weapon of mass destruction. *Gorbey v. United States*, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

Merger of offenses.

Convictions for possession of an explosive device and attempted manufacture or possession of a weapon of mass destruction (WMD) did not merge, because each required an element the other did not; possession of an explosive device required proof that the device was signed to explode or produce uncontained combustion which the WMD offense did not, and the WMD offense required that the device have the potential to seriously injure or kill multiple victims which the explosive device offense did not. *Gorbey v. United States*, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

§ 22-3155. Use, dissemination, or detonation of a weapon of mass destruction.

(a) A person who uses, disseminates, or detonates a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for life.

(b) A person who attempts or conspires to use, disseminate, or detonate a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for not more than 30 years.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Oct. 17, 2002, D.C. Law 14-194, § 105, 49 DCR 5306; June 11, 2013, D.C. Law 19-317, § 307(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).
Legislative history of Law 19-317. — See note to § 22-3154.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 32. THEFT; FRAUD; STOLEN PROPERTY; FORGERY, AND EXTORTION.

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Subchapter II. Theft; Related Offenses.

§ 22-3211. Theft.

Section references. — This section is referenced in § 22-3202, § 22-3212, § 23-546, § 23-581, § 27-101, and § 50-1403.02.

CASE NOTES

Wrongful discharge.

Trial court did not err in granting a former employer summary judgment in a former employee's action alleging wrongful discharge for her refusal to violate D.C. Code §§ 22-3211 and 22-3221 and D.C. Bar R. X, § 1.1 because the employer provided numerous affidavits and the employee's deposition testimony to support its claim that it terminated her employment due to

her unacceptably low rate of productivity and her refusal to commit to improving it; the employee offered no admissible evidence that compliance with the employer's productivity goals caused or would require foreign language document reviewers to violate the law or the Rules of Professional Conduct. *Wallace v. Eckert*, 57 A.3d 943, 2012 D.C. App. LEXIS 519 (2012).

§ 22-3212. Penalties for theft.

(a) *Theft in the first degree.* — Any person convicted of theft in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or

imprisoned for not more than 10 years, or both, if the value of the property obtained or used is \$1,000 or more.

(b) *Theft in the second degree.* — Any person convicted of theft in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained or used has some value.

(c) A person convicted of theft in the first or second degree who has 2 or more prior convictions for theft, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years and for a mandatory-minimum term of not less than one year, or both. A person sentenced under this subsection shall not be released from prison, granted probation, or granted suspension of sentence, prior to serving the mandatory-minimum.

(d) For the purposes of this section, a person shall be considered as having 2 or more prior convictions for theft if he or she has been convicted on at least 2 occasions of violations of:

- (1) Section 22-3211;
- (2) A statute in one or more jurisdictions prohibiting theft or larceny; or
- (3) Conduct that would constitute a violation of section 22-3211 if committed in the District of Columbia.

(Dec. 1, 1982, D.C. Law 4-164, § 112, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(a), 41 DCR 2608; June 3, 1997, D.C. Law 11-275, § 12(b), 44 DCR 1408; Dec. 10, 2009, D.C. Law 18-88, § 214(d), 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 205(a), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (a) and (c), and for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3213. Shoplifting.

(a) A person commits the offense of shoplifting if, with intent to appropriate without complete payment any personal property of another that is offered for sale or with intent to defraud the owner of the value of the property, that person:

- (1) Knowingly conceals or takes possession of any such property;
- (2) Knowingly removes or alters the price tag, serial number, or other identification mark that is imprinted on or attached to such property; or
- (3) Knowingly transfers any such property from the container in which it is displayed or packaged to any other display container or sales package.

(b) Any person convicted of shoplifting shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(c) It is not an offense to attempt to commit the offense described in this section.

(d) A person who offers tangible personal property for sale to the public, or an employee or agent of such a person, who detains or causes the arrest of a person in a place where the property is offered for sale shall not be held liable for detention, false imprisonment, malicious prosecution, defamation, or false arrest, in any proceeding arising out of such detention or arrest, if:

(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed in that person's presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

(Dec. 1, 1982, D.C. Law 4-164, § 113, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581 and § 27-101.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (b).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3214. Commercial piracy.

(a) For the purpose of this section, the term:

(1) “Owner”, with respect to phonorecords or copies, means the person who owns the original fixation of the property involved or the exclusive licensee in the United States of the rights to reproduce and distribute to the public phonorecords or copies of the original fixation. In the case of a live performance the term “owner” means the performer or performers.

(2) “Proprietary information” means customer lists, mailing lists, formulas, recipes, computer programs, unfinished designs, unfinished works of art in any medium, process, program, invention, or any other information, the primary commercial value of which may diminish if its availability is not restricted.

(3) “Phonorecords” means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term “phonorecords” includes the material object in which the sounds are first fixed.

(b) A person commits the offense of commercial piracy if, with the intent to sell, to derive commercial gain or advantage, or to allow another person to derive commercial gain or advantage, that person reproduces or otherwise copies, possesses, buys, or otherwise obtains phonorecords of a sound record-

ing, live performance, or copies of proprietary information, knowing or having reason to believe that the phonorecord or copies were made without the consent of the owner. A presumption of the requisite intent arises if the accused possesses 5 or more unauthorized phonorecords either of the same sound recording or recording of a live performance.

(c) Nothing in this section shall be construed to prohibit:

(1) Copying or other reproduction that is in the manner specifically permitted by Title 17 of the United States Code; or

(2) Copying or other reproduction of a sound recording that is made by a licensed radio or television station or a cable broadcaster solely for broadcast or archival use.

(d) Any person convicted of commercial piracy shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

(e) This section does not apply to any sound recording initially fixed on or after February 15, 1972.

(Dec. 1, 1982, D.C. Law 4-164, § 114, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(b), 41 DCR 2608; Oct. 31, 1995, D.C. Law 11-73, § 2(a), 42 DCR 3277; June 11, 2013, D.C. Law 19-317, § 205(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (d).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3214.01. Deceptive labeling.

(a) For the purposes of this section, the term:

(1) “Audiovisual works” means material objects upon which are fixed a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, now known or later developed, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(2) “Manufacturer” means the person who authorizes or causes the copying, fixation, or transfer of sounds or images to sound recordings or audiovisual works subject to this section.

(3) “Sound recordings” means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(b) A person commits the offense of deceptive labeling if, for commercial advantage or private financial gain, that person knowingly advertises, offers for sale, resale, or rental, or sells, resells, rents, distributes, or transports, or possesses for such purposes, a sound recording or audiovisual work, the label,

cover, or jacket of which does not clearly and conspicuously disclose the true name and address of the manufacturer thereof.

(c) Nothing in this section shall be construed to prohibit:

(1) Any broadcaster who, in connection with, or as part of, a radio or television broadcast transmission, or for the purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work; or

(2) Any person who, in his own home, for his own personal use, and without deriving any commercial advantage or private financial gain, transfers any sounds or images recorded on a sound recording or audiovisual work.

(d)(1) Any person convicted of deceptive labeling involving less than 1,000 sound recordings or less than 100 audiovisual works during any 180-day period shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(2) Any person convicted of deceptive labeling involving 1,000 or more sound recordings or 100 or more audiovisual works during a 180-day period shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(e) Upon conviction under this section, the court shall, in addition to the penalties provided by this section, order the forfeiture and destruction or other disposition of all sound recordings, audiovisual works, and equipment used, or attempted to be used, in violation of this section.

(Dec. 1, 1982, D.C. Law 4-164, § 114a, as added Oct. 31, 1995, D.C. Law 11-73, § 2(b), 42 DCR 3277; June 11, 2013, D.C. Law 19-317, § 205(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (d)(1), and for “not more than \$50,000” in (d)(2).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3214.02. Unlawful operation of a recording device in a motion picture theater.

(a) For the purposes of this section, the term:

(1) “Motion picture theater” means a theater or other auditorium in which a motion picture is exhibited.

(2) “Recording device” means a photographic or video camera, audio or video recorder, or any other device not existing, or later developed, which may be used for recording sounds or images.

(b) A person commits the offense of unlawfully operating a recording device in a motion picture theater if, without authority or permission from the owner of a motion picture theater, or his or her agent, that person operates a recording device within the premises of a motion picture theater.

(c) Any person convicted of unlawfully operating a recording device in a motion picture theater shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(d) A theater owner, or an employee or agent of a theater owner, who detains or causes the arrest of a person in, or immediately adjacent to, a motion picture theater shall not be held liable for detention, false imprisonment, malicious prosecution, defamation, or false arrest in any proceeding arising out of such detention or arrest, if:

(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed, or attempted to commit, in that person's presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

(Dec. 1, 1982, D.C. Law 4-164, § 114b, as added Oct. 31, 1995, D.C. Law 11-73, § 2(b), 42 DCR 3277; June 11, 2013, D.C. Law 19-317, § 205(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (c).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3215. Unauthorized use of motor vehicles.

(a) For the purposes of this section, the term “motor vehicle” means any automobile, self-propelled mobile home, motorcycle, truck, truck tractor, truck tractor with semitrailer or trailer, or bus.

(b) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, without the consent of the owner, the person takes, uses, or operates a motor vehicle, or causes a motor vehicle to be taken, used, or operated, for his or her own profit, use, or purpose.

(c)(1) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, after renting, leasing, or using a motor vehicle under a written agreement which provides for the return of the motor vehicle to a particular place at a specified time, that person knowingly fails to return the motor vehicle to that place (or to any authorized agent of the party from whom the motor vehicle was obtained under the agreement) within 18 days after written demand is made for its return, if the conditions set forth in paragraph (2) of this subsection are met.

(2) The conditions referred to in paragraph (1) of this subsection are as follows:

(A) The written agreement under which the motor vehicle is obtained contains the following statement: “WARNING — Failure to return this vehicle in accordance with the terms of this rental agreement may result in a criminal penalty of up to 3 years in jail”. This statement shall be printed clearly and

conspicuously in a contrasting color, set off in a box, and signed by the person obtaining the motor vehicle in a space specially provided;

(B) There is displayed clearly and conspicuously on the dashboard of the motor vehicle the following notice: "NOTICE — Failure to return this vehicle on time may result in serious criminal penalties"; and

(C) The party from whom the motor vehicle was obtained under the agreement makes a written demand for the return of the motor vehicle, either by actual delivery to the person who obtained the motor vehicle, or by deposit in the United States mail of a postpaid registered or certified letter, return receipt requested, addressed to the person at each address set forth in the written agreement or otherwise provided by the person. The written demand shall state clearly that failure to return the motor vehicle may result in prosecution for violation of the criminal law of the District of Columbia punishable by up to 3 years in jail. The written demand shall not be made prior to the date specified in the agreement for the return of the motor vehicle, except that, if the parties or their authorized agents have mutually agreed to some other date for the return of the motor vehicle, then the written demand shall not be made prior to the other date.

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installation contract as defined in § 50-601(9).

(4) It shall be a defense in any criminal proceeding brought under this subsection that a person failed to return a motor vehicle for causes beyond his or her control. The burden of raising and going forward with the evidence with respect to such a defense shall be on the person asserting it. In any case in which such a defense is raised, evidence that the person obtained the motor vehicle by reason of any false statement or representation of material fact, including a false statement or representation regarding his or her name, residence, employment, or operator's license, shall be admissible to determine whether the failure to return the motor vehicle was for causes beyond his or her control.

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, a person convicted of unauthorized use of a motor vehicle under subsection (b) of this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both.

(2)(A) A person convicted of unauthorized use of a motor vehicle under subsection (b) of this section who took, used, or operated the motor vehicle, or caused the motor vehicle to be taken, used, or operated, during the course of or to facilitate a crime of violence, shall be:

(i) Fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, consecutive to the penalty imposed for the crime of violence; and

(ii) If serious bodily injury results, imprisoned for not less than 5 years, consecutive to the penalty imposed for the crime of violence.

(B) For the purposes of this paragraph, the term "crime of violence" shall have the same meaning as provided in § 23-1331(4).

(3)(A) A person convicted of unauthorized use of a motor vehicle under subsection (b) of this section who has 2 or more prior convictions for unauthor-

ized use of a motor vehicle or theft in the first degree, not committed on the same occasion, shall be fined not less than \$5,000 and not more than the amount set forth in § 22-3571.01, or imprisoned for not less than 30 months nor more than 15 years, or both.

(B) For the purposes of this paragraph, a person shall be considered as having 2 prior convictions for unauthorized use of a motor vehicle or theft in the first degree if the person has been twice before convicted on separate occasions of:

(i) A prior violation of subsection (b) of this section or theft in the first degree;

(ii) A statute in one or more other jurisdictions prohibiting unauthorized use of a motor vehicle or theft in the first degree;

(iii) Conduct that would constitute a violation of subsection (b) of this section or a violation of theft in the first degree if committed in the District of Columbia; or

(iv) Conduct that is substantially similar to that prosecuted as a violation of subsection (b) of this section or theft in the first degree.

(4) A person convicted of unauthorized use of a motor vehicle under subsection (c) of this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 3 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 115, 29 DCR 3976; Mar. 10, 1983, D.C. Law 4-199, § 2, 30 DCR 119; Dec. 10, 2009, D.C. Law 18-88, § 214(e), 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 205(f), 60 DCR 2064.)

Section references. — This section is referenced in § 16-2331, § 16-2332, § 16-2333, § 23-581, and § 50-1403.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317, in (d), substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (d)(1) and (d)(4), and for “not more than \$10,000” in (d)(2)(A)(i); and substituted

“and not more than the amount set forth in § 22-3571.01” for “nor more than \$15,000” in (d)(3)(A).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3216. Taking property without right.

A person commits the offense of taking property without right if that person takes and carries away the property of another without right to do so. A person convicted of taking property without right shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 116, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(g), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300”.

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

*Subchapter II-A. Theft of Utility Service.***§ 22-3218.04. Penalties for violation.**

(a) A person who violates § 22-3218.02 shall be guilty of a misdemeanor, and, upon a conviction, shall be imprisoned for not more than 60 days, or fined, not more than the amount set forth in § 22-3571.01, or both. In the case of a second or subsequent conviction, a person who violates § 22-3218.02 shall be imprisoned for not more than 180 days, or fined, not more than the amount set forth in § 22-3571.01, or both.

(b) In addition to the criminal penalties in subsection (a) of this section, a person who is found to have violated § 22-3218.02 in a civil proceeding shall be liable to the company using or engaged in the generation or distribution of electricity or gas for restitution of the amount of any losses or damage sustained.

(Dec. 1, 1982, D.C. Law 4-164, § 118c, as added June 12, 2003, D.C. Law 14-310, § 15, 50 DCR 1092; June 11, 2013, D.C. Law 19-317, § 205(h), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (a), substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “not more than \$500”, and the second occurrence for “not more than \$1,500”.

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

*Subchapter III. Fraud; Related Offenses.***§ 22-3221. Fraud.**

Section references. — This section is referenced in § 22-3202, § 27-101, § 31-5606.04, and § 44-151.15.

CASE NOTES**Wrongful discharge.**

Trial court did not err in granting a former employer summary judgment in a former employee's action alleging wrongful discharge for her refusal to violate D.C. Code §§ 22-3211 and 22-3221 and D.C. Bar R. X, § 1.1 because the employer provided numerous affidavits and the employee's deposition testimony to support its claim that it terminated her employment due to

her unacceptably low rate of productivity and her refusal to commit to improving it; the employee offered no admissible evidence that compliance with the employer's productivity goals caused or would require foreign language document reviewers to violate the law or the Rules of Professional Conduct. *Wallace v. Eckert*, 57 A.3d 943, 2012 D.C. App. LEXIS 519 (2012).

§ 22-3222. Penalties for fraud.*(a) Fraud in the first degree. —*

(1) Any person convicted of fraud in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or twice the value of the property obtained or lost, whichever is greater, or imprisoned for not more than

10 years, or both, if the value of the property obtained or lost is \$1,000 or more; and

(2) Any person convicted of fraud in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained or lost has some value.

(b) *Fraud in the second degree.* —

(1) Any person convicted of fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or twice the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct is \$1,000 or more; and

(2) Any person convicted of fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property that was the object of the scheme or systematic course of conduct has some value.

(Dec. 1, 1982, D.C. Law 4-164, § 122, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(c), 41 DCR 2608; June 3, 2011, D.C. Law 18-377, § 12(a), 58 DCR 1174; June 11, 2013, D.C. Law 19-317, §§ 111(a)(1), 205(i), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 20-108.01, and § 42-404.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (a)(1), for “not more than \$1,000” in (a)(2) and (b)(2), and for “not more than \$3,000”

in (b)(1); and substituted “twice” for “3 times” in (a)(1) and (b)(1).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3223. Credit card fraud.

(a) For the purposes of this section, the term “credit card” means an instrument or device, whether known as a credit card, debit card, or by any other name, issued for use of the cardholder in obtaining or paying for property or services.

(b) A person commits the offense of credit card fraud if, with intent to defraud, that person obtains or pays for property or services by:

(1) Knowingly using a credit card, or the number or description thereof, which has been issued to another person without the consent of the person to whom it was issued;

(2) Knowingly using a credit card, or the number or description thereof, which has been revoked or cancelled;

(3) Knowingly using a falsified, mutilated, or altered credit card or number or description thereof;

(4) Representing that he or she is the holder of a credit card and the credit card had not in fact been issued; or

(5) Knowingly using for the employee’s or contractor’s own purposes a credit card, or the number on or description of the credit card, issued to or

provided to an employee or contractor by or at the request of an employer for the employer's purposes.

(c) A credit card is deemed cancelled or revoked when notice in writing thereof has been received by the named holder as shown on the credit card or by the records of the issuer.

(d)(1) Except as provided in paragraph (2) of this subsection, any person convicted of credit card fraud shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(2) Any person convicted of credit card fraud shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, if the value of the property or services obtained or paid for is \$1,000 or more.

(Dec. 1, 1982, D.C. Law 4-164, § 123, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(d), 41 DCR 2608; Dec. 10, 2009, D.C. Law 18-88, § 214(f), 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 205(j), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 22-3202.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (d)(1), and for “not more than \$5,000” in (d)(2).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3224. Fraudulent registration.

(a) A person commits the offense of fraudulent registration if, with intent to defraud the proprietor or manager of a hotel, motel, or other establishment which provides lodging to transient guests, that person falsely registers under a name or address other than his or her actual name or address.

(b) Any person convicted of fraudulent registration shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 124, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(k), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (b).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III-A. Insurance Fraud.

§ 22-3225.04. Penalties.

(a) Any person convicted of insurance fraud in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 15 years, or both.

(b)(1) Except as provided in paragraph (2) of this subsection, any person convicted of insurance fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(2) Any person convicted of insurance fraud in the second degree who has been convicted previously of insurance fraud pursuant to § 22-3225.02 or § 22-3225.03, or a felony conviction based on similar grounds in any other jurisdiction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(c) Any person convicted of misdemeanor insurance fraud shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

(d) A person convicted of a felony violation of this subchapter shall be disqualified from engaging in the business of insurance, subject to 18 U.S.C. § 1033(e)(2).

(Dec. 1, 1982, D.C. Law 4-164, § 125d, as added Apr. 27, 1999, D.C. Law 12-273, § 2, 46 DCR 1132; June 19, 2001, D.C. Law 13-313, § 12(a), 48 DCR 1873; July 25, 2006, D.C. Law 16-144, § 2(d), 53 DCR 2838; June 11, 2013, D.C. Law 19-317, § 205(l), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3225.05.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$50,000” in (a), for “not more than \$10,000” in (b)(1), for “not more than \$20,000” in (b)(2), and for “not more than \$1,000” in (c).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III-B. Telephone Fraud.

§ 22-3226.10. Criminal penalties.

Any telephone solicitor who violates § 22-3226.06 and obtains property thereby shall be guilty of the crime of telemarketing fraud, which is punishable as follows:

(1) If the amount of the transaction is valued at \$20,000 or more, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 4 years, or both.

(2) If the amount of the transaction is valued at less than \$20,000 but more than \$5,000, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 3 years, or both.

(3) If the amount of the transaction is valued at less than \$5,000 or less, the seller or telephone solicitor shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 6 months, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 126j, as added June 8, 2001, D.C. Law 13-301, § 102, 47 DCR 7039; June 11, 2013, D.C. Law 19-317, § 205(m), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 22-3226.06.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (1), for “not more than \$5,000” in (2), and “not more than \$500” in (3).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III-C. Identity Theft.

§ 22-3227.03. Penalties for identity theft.

(a) *Identity theft in the first degree.* — Any person convicted of identity theft shall be fined not more than (1) \$10,000, (2) twice the value of the property obtained or (3) twice the amount of the financial injury, whichever is greatest, or imprisoned for not more than 10 years, or both, if the property obtained, or attempted to be obtained, or the amount of the financial injury is the amount set forth in § 22-3571.01 or more.

(b) *Identity theft in the second degree.* — Any person convicted of identity theft shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained, or attempted to be obtained, or the amount of the financial injury, has some value, or if another person is falsely accused of, or arrested for, committing a crime because of the use, without permission, of that person’s personal identifying information.

(c) *Enhanced penalty.* — Any person who commits the offense of identity theft against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1½ times the maximum term of imprisonment otherwise authorized for the offense, or both. It is an affirmative defense that the accused:

(1) Reasonably believed that the victim was not 65 years of age or older at the time of the offense; or

(2) Could not have determined the age of the victim because of the manner in which the offense was committed.

(Dec. 1, 1982, D.C. Law 4-164, § 127c, as added Mar. 27, 2004, D.C. Law 15-106, § 2(c), 50 DCR 9809; Apr. 24, 2007, D.C. Law 16-306, § 218, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 214(k), 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 12(d), 58 DCR 1174; June 11, 2013, D.C. Law 19-317, §§ 111(a)(2), 205(n), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “twice” for “3 times” twice in (a);

and substituted “not more than the amount set forth in § 22-3571.01” for “\$10,000” in (a), and for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IV. Stolen Property.

§ 22-3231. Trafficking in stolen property.

(a) For the purposes of this section, the term “traffics” means:

(1) To sell, pledge, transfer, distribute, dispense, or otherwise dispose of property to another person as consideration for anything of value; or

(2) To buy, receive, possess, or obtain control of property with intent to do any of the acts set forth in paragraph (1) of this subsection.

(b) A person commits the offense of trafficking in stolen property if, on 2 or more separate occasions, that person traffics in stolen property, knowing or having reason to believe that the property has been stolen.

(c) It shall not be a defense to a prosecution under this section, alone or in conjunction with § 22-1803, that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(d) Any person convicted of trafficking in stolen property shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 131, 29 DCR 3976; Apr. 20, 2012, D.C. Law 19-120, § 101(b), 58 DCR 11235; June 11, 2013, D.C. Law 19-317, § 205(o), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3202, § 23-546, and § 50-1403.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (d).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3232. Receiving stolen property.

(a) A person commits the offense of receiving stolen property if that person buys, receives, possesses, or obtains control of stolen property, knowing or having reason to believe that the property was stolen.

(b) It shall not be a defense to a prosecution under this section, alone or in conjunction with § 22-1803, that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(c)(1) Any person convicted of receiving stolen property shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 7 years, or both, if the value of the stolen property is \$1,000 or more.

(2) Any person convicted of receiving stolen property shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both, if the stolen property has some value.

(d) For the purposes of this section, the term “stolen property” includes property that is not in fact stolen if the person who buys, receives, possesses, or obtains control of the property had reason to believe that the property was stolen.

(Dec. 1, 1982, D.C. Law 4-164, § 132, 29 DCR 3976; Aug. 20, 1994, D.C. Law 10-151, § 113(f), 41 DCR 2608; June 3, 2011, D.C. Law 18-377, § 12(e), 58 DCR 1174; Apr. 20, 2012, D.C. Law 19-120, § 101(c), 58 DCR 11235; June 11, 2013, D.C. Law 19-317, § 205(p), 60 DCR 2064.)

Section references. — This section is referenced in § 22-3202, § 23-546, § 23-581, and § 50-1403.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (c)(1), and for “not more than \$1,000” in (c)(2).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3233. Altering or removing motor vehicle identification numbers.

(a) It is unlawful for a person to knowingly remove, obliterate, tamper with, or alter any identification number on a motor vehicle or a motor vehicle part.

(b)(1) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01, or both.

(2) Any person who violates subsection (a) of this section shall be guilty of a felony if the value of the motor vehicle or motor vehicle part is \$1,000 or more and, upon conviction, shall be imprisoned for not more than 5 years, or fined not more than the amount set forth in § 22-3571.01, or both.

(c) For the purposes of this section, the term:

(1) “Identification number” means a number or symbol that is originally inscribed or affixed by the manufacturer to a motor vehicle or motor vehicle part for purposes of identification.

(2) “Motor vehicle” means any automobile, self-propelled mobile home, motorcycle, motor scooter, truck, truck tractor, truck semi trailer, truck trailer, bus, or other vehicle propelled by an internal-combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired.

(Dec. 1, 1982, D.C. Law 4-164, § 133, as added Apr. 24, 2007, D.C. Law 16-306, § 217, 53 DCR 8610; June 3, 2011, D.C. Law 18-377, § 12(f), 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 205(q), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b)(1), and for “not more than \$5,000” in (b)(2).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3234. Altering or removing bicycle identification numbers.

(a) It is unlawful for a person to knowingly remove, obliterate, tamper with, or alter any identification number on a bicycle or bicycle part.

(b) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01, or both.

(c) For the purposes of this section, the term:

(1) "Bicycle" shall have the same meaning as provided in § 50-1609(1).

(2) "Identification number" shall have the same meaning as provided in § 50-1609(1A).

(Dec. 1, 1982, D.C. Law 4-164, § 134, as added May 1, 2008, D.C. Law 17-149, § 3, 55 DCR 1272; June 11, 2013, D.C. Law 19-317, § 205(r), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (b).

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Legislative history of Law 19-317. — See note to § 22-3212.

Subchapter V. Forgery.

§ 22-3242. Penalties for forgery.

(a) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both, if the written instrument purports to be:

(1) A stamp, legal tender, bond, check, or other valuable instrument issued by a domestic or foreign government or governmental instrumentality;

(2) A stock certificate, bond, or other instrument representing an interest in or claim against a corporation or other organization of its property;

(3) A public record, or instrument filed in a public office or with a public servant;

(4) A written instrument officially issued or created by a public office, public servant, or government instrumentality;

(5) A check which upon its face appears to be a payroll check;

(6) A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(7) A written instrument having a value of \$10,000 or more.

(b) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both, if the written instrument is or purports to be:

(1) A token, fare card, public transportation transfer certificate, or other article manufactured for use as a symbol of value in place of money for the purchase of property or services;

(2) A prescription of a duly licensed physician or other person authorized to issue the same for any controlled substance or other instrument or devices used in the taking or administering of controlled substances for which a prescription is required by law; or

(3) A written instrument having a value of \$1,000 or more.

(c) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both, in any other case.

(Dec. 1, 1982, D.C. Law 4-164, § 142, 29 DCR 3976; June 3, 2011, D.C. Law 18-377, § 12(g), 58 DCR 1174; June 11, 2013, D.C. Law 19-317, § 205(s), 60 DCR 2064.)

Section references. — This section is referenced in § 16-4901.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (a), for “not more than \$5,000” in (b), and for “not more than \$2,500” in (c).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter VI. Extortion.

§ 22-3251. Extortion.

(a) A person commits the offense of extortion if:

(1) That person obtains or attempts to obtain the property of another with the other’s consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury; or

(2) That person obtains or attempts to obtain property of another with the other’s consent which was obtained under color or pretense of official right.

(b) Any person convicted of extortion shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 151, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(t), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3252. Blackmail.

(a) A person commits the offense of blackmail, if, with intent to obtain property of another or to cause another to do or refrain from doing any act, that person threatens:

(1) To accuse any person of a crime;

(2) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(3) To impair the reputation of any person, including a deceased person.

(b) Any person convicted of blackmail shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(Dec. 1, 1982, D.C. Law 4-164, § 152, 29 DCR 3976; June 11, 2013, D.C. Law 19-317, § 205(u), 60 DCR 2064.)

Section references. — This section is referenced in § 23-546.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — See note to § 22-3212.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 33. TRESPASS; INJURIES TO PROPERTY.

Sec.

- 22-3301. Forcible entry and detainer.
- 22-3302. Unlawful entry on property.
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- trees or protections thereof; penalty.
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- 22-3318. Malicious pollution of water.
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§ 22-3301. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than 1 year or a fine of not more than the amount set forth in § 22-3571.01, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 851; June 11, 2013, D.C. Law 19-317, § 201(m), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$100”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3302. Unlawful entry on property.

(a)(1) Any person who, without lawful authority, shall enter, or attempt to enter, any private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 180 days, or both. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be *prima facie* evidence that any person found in such property has entered against the will of the person in legal possession of the property.

(2) For the purposes of this subsection, the term “private dwelling” includes a privately owned house, apartment, condominium, or any building used as living quarters, or cooperative or public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by the Department of Housing and Urban Development, or housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority.

(b) Any person who, without lawful authority, shall enter, or attempt to enter, any public building, or other property, or part of such building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof or his or her agent, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof or his or her agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 6 months, or both.

(Mar. 3, 1901, 31 Stat. 1324, ch. 854, § 824; Mar. 4, 1935, 49 Stat. 37, ch. 23; July 17, 1952, 66 Stat. 766, ch. 941, § 1; Apr. 24, 2007, D.C. Law 16-306, § 219, 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 215, 56 DCR 7413; June 11, 2013, D.C. Law 19-317, § 201(h), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (a)(1) and (b).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3303. Grave robbery; buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than 1 year nor more than 3 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1334, ch. 854, § 891; June 11, 2013, D.C. Law 19-317, § 303(s), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3305. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not more than the amount set forth in § 22-3571.01 and by imprisonment for not less than 2 years or more than 10 years.

(Mar. 3, 1901, ch. 854, § 825a; Mar. 3, 1905, 33 Stat. 1033, ch. 1461; Dec. 27, 1967, 81 Stat. 739, Pub. L. 90-226, title VI, § 607; June 11, 2013, D.C. Law 19-317, § 201(i), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3306. Defacing books, manuscripts, publications, or works of art.

Any person who shall wrongfully deface, injure, or mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, whether the property of the United States or of the District of Columbia or of any individual or corporation in said District, or who shall wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, public record, print, engraving, medal, newspaper, or work of art, the property of the United States or of the District of Columbia, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a

fine of not less than \$10 and not more than the amount set forth in § 22-3571.01, and by imprisonment for not less than 1 month nor more than 180 days, or both, for every such offense.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 849; June 30, 1902, 32 Stat. 535, ch. 1329; Dec. 1, 1982, D.C. Law 4-164, § 601(d), 29 DCR 3976; Sept. 5, 1985, D.C. Law 6-19, § 14(b), 32 DCR 3590; Aug. 20, 1994, D.C. Law 10-151, § 105(n), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(l), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3307. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 844; Aug. 20, 1994, D.C. Law 10-151, § 105(o), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(j), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3309. Destroying boundary markers.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his or her own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person’s own land so cutting down and destroying the same, shall be fined not more than the amount set forth in § 22-3571.01 and imprisoned not exceeding 180 days.

(Mar. 3, 1901, 31 Stat. 1333, ch. 854, § 880; May 21, 1994, D.C. Law 10-119, § 2(u), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 105(q), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 201(w), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3310. Destroying vines, bushes, shrubs, trees or protections thereof; penalty.

It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(1) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 90 days, or both; or

(2) For vines, bushes, shrubs, and smaller trees, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 30 days, or both.

(July 29, 1892, 27 Stat. 324, ch. 320, § 13; June 19, 2001, D.C. Law 13-314, § 3, 48 DCR 2076; June 12, 2003, D.C. Law 14-309, § 201, 50 DCR 888; Apr. 13, 2005, D.C. Law 15-354, § 21(b), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 214(d), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “a fine of not more than the amount set forth in § 22-3571.01” for “\$15,000” in (1), and for “\$5,000” in (2).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3311. Disorderly conduct in public buildings or grounds; injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 6 months, or both.

(July 29, 1892, 27 Stat. 325, ch. 320, § 15; Oct. 20, 1967, 81 Stat. 277, Pub. L. 90-108, § 2; June 11, 2013, D.C. Law 19-317, § 214(e), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — See

note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3312.04. Penalties.

(a) Any person who violates any provision of § 22-3312.01 shall be fined not less than \$250 and not more than the amount set forth in § 22-3571.01, or imprisoned for a period not to exceed 180 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of § 22-3312.01, pursuant to Chapter 8 of Title 8.

(b) Any person who violates any provision of § 22-3312.02 or § 22-3312.03 shall be guilty of a misdemeanor punishable by a fine not more than the amount set forth in § 22-3571.01, or imprisonment not to exceed 180 days, or both.

(c) In addition to the penalties provided in subsection (a) of this section, a person convicted of violating any provision of § 22-3312.01 may be required to perform community service as provided in § 16-712.

(d) Any person who willfully places graffiti on property without the consent of the owner shall be subject to the sanctions in subsection (a) of this section.

(e) Any person who willfully possesses graffiti material with the intent to place graffiti on property without the consent of the owner shall be fined not less than \$100 or more than \$1,000.

(f) In addition to any fine or sentence imposed under this section, the court shall order the person convicted to make restitution to the owner of the property, or to the party responsible for the property upon which the graffiti has been placed, for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.

(g) The District of Columbia courts shall find parents or guardians civilly liable for all fines imposed or payments for abatement required if the minor cannot pay within a reasonable period of time established by the court.

(Mar. 10, 1983, D.C. Law 4-203, § 5, 30 DCR 180; June 12, 2001, D.C. Law 13-309, § 2(d), 48 DCR 1613; June 11, 2013, D.C. Law 19-317, § 234, 60 DCR 2064.)

Section references. — This section is referenced in § 42-3141.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “or more than \$1,000” in (a); and substituted “not more than the amount set forth in § 22-3571.01” for “not to exceed \$500” in (b).

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3318. Malicious pollution of water.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the City of Washington, becomes impure, filthy, or unfit for use, shall be fined not less than \$500 and not more than the amount

set forth in § 22-3571.01, or imprisoned at hard labor not more than 3 years nor less than 1 year.

(R.S., § 1806; Feb. 11, 1895, 28 Stat. 650, ch. 79; June 11, 2013, D.C. Law 19-317, § 219 ac(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$1,000”.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3319. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(Mar. 3, 1901, 31 Stat. 1327, ch. 854, § 846; June 11, 2013, D.C. Law 19-317, § 303(m), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — See note to § 22-3301.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 34. USE OF “DISTRICT OF COLUMBIA” BY CERTAIN PERSONS.

Sec. 22-3402. Use of “District of Columbia” or similar designation by private detective or collection agency — Penalty.

§ 22-3402. Use of “District of Columbia” or similar designation by private detective or collection agency — Penalty.

Any person who violates § 22-3401 shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

(Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87-837, § 2; June 11, 2013, D.C. Law 19-317, § 235, 60 DCR 2064.)

Section references. — This section is referenced in § 22-3401.

Effect of amendments. — The 2013

amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “of not more than \$300”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was

assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 35A. VOYEURISM.

Sec.

22-3531. Voyeurism.

§ 22-3531. Voyeurism.

(a) For the purposes of this section, the term:

(1) “Electronic device” means any electronic, mechanical, or digital equipment that captures visual or aural images, including cameras, computers, tape recorders, video recorders, and cellular telephones.

(2) “Private area” means the naked or undergarment-clad genitals, pubic area, anus, or buttocks, or female breast below the top of the areola.

(b) Except as provided in subsection (e) of this section, it is unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing an individual who is:

- (1) Using a bathroom or rest room;
- (2) Totally or partially undressed or changing clothes; or
- (3) Engaging in sexual activity.

(c)(1) Except as provided in subsection (e) of this section, it is unlawful for a person to electronically record, without the express and informed consent of the individual being recorded, an individual who is:

- (A) Using a bathroom or rest room;
- (B) Totally or partially undressed or changing clothes; or
- (C) Engaging in sexual activity.

(2) Express and informed consent is only required when the individual engaged in these activities has a reasonable expectation of privacy.

(d) Except as provided in subsection (e) of this section, it is unlawful for a person to intentionally capture an image of a private area of an individual, under circumstances in which the individual has a reasonable expectation of privacy, without the individual’s express and informed consent.

(e) This section does not prohibit the following:

(1) Any lawful law enforcement, correctional, or intelligence observation or surveillance;

(2) Security monitoring in one’s own home;

(3) Security monitoring in any building where there are signs prominently displayed informing persons that the entire premises or designated portions of the premises are under surveillance; or

(4) Any electronic recording of a medical procedure which is conducted under circumstances where the patient is unable to give consent.

(f)(1) A person who violates subsection (b), (c), or (d) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(2) A person who distributes or disseminates, or attempts to distribute or disseminate, directly or indirectly, by any means, a photograph, film, videotape, audiotape, compact disc, digital video disc, or any other image or series of images or sounds or series of sounds that the person knows or has reason to know were taken in violation of subsection (b), (c), or (d) of this section is guilty of a felony and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(g) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (b), (c), or (d) of this section for which the penalty is set forth in subsection (f)(1) of this section.

(Apr. 24, 2007, D.C. Law 16-306, § 105, 53 DCR 8610; June 11, 2013, D.C. Law 19-317, § 206(d), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (f), substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (f)(1), and for “not more than \$5,000” in (f)(2).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 35B. FINES FOR CRIMINAL OFFENSES.

Sec.

22-3571.01. Fines for criminal offenses.

22-3571.02. Applicability of fine proportionality provision.

§ 22-3571.01. Fines for criminal offenses.

(a) Notwithstanding any other provision of the law, and except as provided in § 22-3571.02, a defendant who has been found guilty of an offense under the District of Columbia Official Code punishable by imprisonment may be sentenced to pay a fine as provided in this section.

(b) An individual who has been found guilty of such an offense may be fined not more than the greatest of:

(1) \$100 if the offense is punishable by imprisonment for 10 days or less;
(2) \$250 if the offense is punishable by imprisonment for 30 days, or one month, or less but more than 10 days;

(3) \$500 if the offense is punishable by imprisonment for 90 days, or 3 months, or less but more than 30 days;

(4) \$1,000 if the offense is punishable by imprisonment for 180 days, or 6 months, or less but more than 90 days;

(5) \$2,500 if the offense is punishable by imprisonment for one year or less but more than 180 days;

(6) \$12,500 if the offense is punishable by imprisonment for 5 years or less but more than one year;

(7) \$25,000 if the offense is punishable by imprisonment for 10 years or less but more than 5 years;

(8) \$37,500 if the offense is punishable by imprisonment for 15 years or less but more than 10 years;

(9) \$50,000 if the offense is punishable by imprisonment for 20 years or less but more than 15 years;

(10) \$75,000 if the offense is punishable by imprisonment for 30 years or less but more than 20 years;

(11) \$125,000 if the offense is punishable by imprisonment for more than 30 years; or

(12) \$250,000 if the offense resulted in death.

(c) An organization that has been found guilty of an offense punishable by imprisonment for 6 months or more may be fined not more than the greatest of:

(1) Twice the maximum amount specified in the law setting forth the penalty for the offense;

(2) Twice the applicable amount under subsection (b) of this section; or

(3) Twice the applicable amount under § 22-3571.02(a).

(June 11, 2013, D.C. Law 19-317, § 101, 60 DCR 2064.)

Section references. — This section is referenced in § 2-381.09, § 2-1402.66, § 4-1321.07, § 7-2507.06, § 8-111.09, § 8-1906, § 16-1005, § 16-1024, § 16-2336, § 16-2348, § 16-2364, § 16-2394, § 16-5103, § 18-112, § 20-102, § 21-591, § 22-301, § 22-302, § 22-303, § 22-401, § 22-402, § 22-403, § 22-404, § 22-404.01, § 22-404.02, § 22-404.03, § 22-405, § 22-406, § 22-407, § 22-501, § 22-601, § 22-704, § 22-712, § 22-713, § 22-722, § 22-723, § 22-801, § 22-811, § 22-851, § 22-902, § 22-936, § 22-951, § 22-1006.01, § 22-1012, § 22-1101, § 22-1102, § 22-1211, § 22-1301, § 22-1307, § 22-1312, § 22-1314.02, § 22-1319, § 22-1321, § 22-1322, § 22-1323, § 22-1341, § 22-1402, § 22-1403, § 22-1404, § 22-1405, § 22-1406, § 22-1409, § 22-1502, § 22-1510, § 22-1513, § 22-1514, § 22-1701, § 22-1702, § 22-1703, § 22-1704, § 22-1705, § 22-1706, § 22-1708, § 22-1713, § 22-1803, § 22-1804a, § 22-1805a, § 22-1807, § 22-1810, § 22-1837, § 22-1901, § 22-1931, § 22-2001, § 22-2104, § 22-2105, § 22-2106, § 22-2107, § 22-2201, § 22-2304, § 22-2402, § 22-2403, § 22-2404, § 22-2405, § 22-2501, § 22-2511, § 22-2601, § 22-2603.03, § 22-2701, § 22-2704, § 22-2705, § 22-2706, § 22-2707, § 22-2708, § 22-2709, § 22-2710, § 22-2711, § 22-

2712, § 22-2716, § 22-2722, § 22-2731, § 22-2752, § 22-2801, § 22-2802, § 22-2803, § 22-3002, § 22-3003, § 22-3004, § 22-3005, § 22-3006, § 22-3008, § 22-3009, § 22-3009.01, § 22-3009.02, § 22-3009.03, § 22-3009.04, § 22-3010, § 22-3010.01, § 22-3010.02, § 22-3013, § 22-3014, § 22-3015, § 22-3016, § 22-3103, § 22-3134, § 22-3154, § 22-3155, § 22-3212, § 22-3213, § 22-3214, § 22-3214.01, § 22-3214.02, § 22-3215, § 22-3216, § 22-3218.04, § 22-3222, § 22-3223, § 22-3224, § 22-3225.04, § 22-3226.10, § 22-3227.03, § 22-3231, § 22-3232, § 22-3233, § 22-3234, § 22-3242, § 22-3251, § 22-3252, § 22-3301, § 22-3302, § 22-3303, § 22-3305, § 22-3306, § 22-3307, § 22-3309, § 22-3310, § 22-3311, § 22-3312.04, § 22-3318, § 22-3319, § 22-3402, § 22-3531, § 22-3571.02, § 22-4015, § 22-4134, § 22-4331, § 22-4402, § 22-4404, § 22-4502, § 22-4503, § 22-4504, § 22-4514, § 22-4515, § 22-4515a, § 23-542, § 23-543, § 23-703, § 23-1108, § 23-1110, § 23-1111, § 23-1327, § 23-1328, § 23-1329, § 24-403.01, § 25-434, § 25-772, § 25-785, § 25-831, § 25-1001, § 28-2305, § 28-3313, § 28-3817, § 28-4505, § 28-4506, § 28-4607, § 32-213, § 32-1011, § 32-1307, § 47-102, § 47-391.03, § 47-821, § 47-828, § 47-850.02, § 47-861, § 47-

863, § 47-1805.04, § 47-2014, § 47-2018, § 47-2106, § 47-2406, § 47-2408, § 47-2409, § 47-2421, § 47-2707, § 47-2808, § 47-2839.01, § 47-2846, § 47-2850, § 47-2853.27, § 47-2883.04, § 47-2884.16, § 47-2885.20, § 47-2886.14, § 47-2887.14, § 47-3409, § 47-3719, § 47-4101, § 47-4102, § 47-4103, § 47-4104, § 47-4105, § 47-4106, § 47-4107, § 47-4405, § 47-4406, § 48-711, § 48-904.01, § 48-904.02, § 48-904.03, § 48-904.03a, § 48-904.07, § 48-904.10, § 48-921.02, § 48-1005, § 48-1103, § 50-329.05, § 50-351, § 50-371, § 50-405, § 50-607, § 50-1215, § 50-1301.74, § 50-1301.75, § 50-1331.08, § 50-1401.01, § 50-1401.02, § 50-1403.01, § 50-1403.03, § 50-1501.04, § 50-1507.03, § 50-1912, § 50-2201.03, § 50-2201.04, § 50-2201.04b, § 50-2201.05b, § 50-2201.05c, § 50-2201.05d, § 50-2201.28, § 50-2203.01, § 50-2206.13, § 50-

2206.15, § 50-2206.16, § 50-2206.18, § 50-2206.32, § 50-2206.34, § 50-2206.36, § 50-2302.03, § 50-2303.02, § 50-2421.04, § 50-2421.09, § 50-2421.10, and § 50-2632.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-3571.02. Applicability of fine proportionality provision.

(a) Notwithstanding any other provision of law, a sentence to pay a fine under § 22-3571.01 shall be subject to the following:

(1) If a law setting forth the penalty for such an offense specifies a maximum fine that is lower than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may not be fined more than the maximum amount specified in the law setting forth the penalty for the offense.

(2) If a law setting forth the penalty for such an offense specifies a maximum fine that is higher than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may be fined the maximum amount specified in the law setting forth the penalty for the offense.

(3) If a law setting forth the penalty for such an offense specifies no fine and such law, by specific reference, does not exempt the offense from the fine otherwise applicable under § 22-3571.01, the defendant may be fined pursuant to § 22-3571.01.

(b)(1) If any person derives pecuniary gain from such an offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

(2) The court may impose a fine under this subsection in excess of the fine provided for by § 22-3571.01 only to the extent that the pecuniary gain or loss is both alleged in the indictment or information and is proven beyond a reasonable doubt.

(c) [This chapter and the provisions of D.C. Law 19-317] shall not apply to any provision of Title 11 of the District of Columbia Official Code.

(June 11, 2013, D.C. Law 19-317, § 102, 60 DCR 2064.)

Section references. — This section is referenced in § 22-3571.01.

Legislative history of Law 19-317. — See note to § 22-3571.01.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE III. SEX OFFENDERS.

CHAPTER 40. SEX OFFENDER REGISTRATION.

Sec.

22-4015. Penalties; mandatory release condition.

§ 22-4015. Penalties; mandatory release condition.

(a) Any sex offender who knowingly violates any requirement of this chapter, including any requirement adopted by the Agency pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 180 days, or both. In the event that a sex offender convicted under this section has a prior conviction under this section, or a prior conviction in any other jurisdiction for failing to comply with the requirements of a sex offender registration program, the sex offender shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 5 years, or both.

(b) Compliance with the requirements of this chapter, including any requirements adopted by the Agency pursuant to this chapter, shall be a mandatory condition of probation, parole, supervised release, and conditional release of any sex offender.

(July 11, 2000, D.C. Law 13-137, § 16, 47 DCR 797; June 11, 2013, D.C. Law 19-317, § 236, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (a), substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in the first sentence, and for “not more than \$25,000” in the second sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE III-A. DNA TESTING.

CHAPTER 41A. DNA TESTING AND POST-CONVICTION RELIEF FOR INNOCENT PERSONS.

Sec.
22-4131. Definitions.

Sec.
22-4134. Preservation of evidence.

§ 22-4131. Definitions.

For the purposes of this chapter, the term:

(1) "Actual innocence" or "actually innocent" means that the person did not commit the crime of which he or she was convicted.

(2) "Biological material" means the contents of a sexual assault examination kit, bodily fluids (including, but not limited to, blood, semen, saliva, and vaginal fluid), hair, skin tissue, fingernail scrapings, bone, or other human DNA source matter which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime. This definition applies equally to material that is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, or cigarettes, and to material that is recovered from evidence and thereafter maintained separately from that evidence, including, but not limited to, on a slide, on a swab, in cuttings, or in scrapings.

(3) "Crime of violence" means the crimes cited in § 23-1331(4).

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA testing" means forensic DNA analysis of biological material.

(6) "Law enforcement agencies" means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses. The term "law enforcement agencies" shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to § 5-133.17, to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(7) "New evidence" means evidence that:

(A) Was not personally known and could not, in the exercise of reasonable diligence, have been personally known to the movant at the time of the trial or the plea proceeding;

(B) Was personally known to the movant at the time of the trial or the plea proceeding, but could not be produced at that time because:

(i) The presence or the testimony of a witness could not be compelled or, in the exercise of reasonable diligence by the movant, otherwise obtained; or

(ii) Physical evidence, in the exercise of the movant's reasonable diligence, could not be obtained; or

(C) Was obtained as a result of post-conviction DNA testing.

(May 17, 2002, D.C. Law 14-134, § 2, 49 DCR 408; June 19, 2013, D.C. Law 19-320, § 510, 60 DCR 3390.)

Section references. — This section is referenced in § 5-113.32 and § 22-4133.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320, in (2), substituted “the contents of a sexual assault examination kit, bodily fluids (including, but not limited to, blood, semen, saliva, and vaginal fluid), hair, skin tissue, fingernail scrapings, bone, or other human DNA source matter” for “a sexual assault forensic examination kit, semen, vaginal fluid, blood, saliva, visible skin tissue, or hair” and added the last sentence.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 22-4134. Preservation of evidence.

(a) Law enforcement agencies shall preserve biological material that was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent for a crime of violence and not consumed in previous DNA testing for 5 years or as long as any person incarcerated in connection with that case or investigation remains in custody, whichever is longer.

(b) Notwithstanding subsection (a) of this section, the District of Columbia may dispose of the biological material after 5 years, if the District of Columbia notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the Public Defender Service), of the intention of the District of Columbia to dispose of the evidence and the District of Columbia affords such person not less than 180 days after the notification to make an application for DNA testing of the evidence.

(c) The District of Columbia shall not be required to preserve evidence that must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable. If practicable, the District of Columbia shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it.

(d) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section with the intent to (1) impair the integrity of that evidence, (2) prevent that evidence from being subjected to DNA testing, or (3) prevent the production or use of that evidence in an official proceeding, shall be subject to a fine not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(May 17, 2002, D.C. Law 14-134, § 5, 49 DCR 408; June 11, 2013, D.C. Law 19-317, § 237, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “of \$100,000” in (d).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES.

CHAPTER 42A. CRIMINAL JUSTICE COORDINATING COUNCIL.

Subchapter I. General

Sec.

22-4233. Membership.

Subchapter I. General.

§ 22-4233. Membership.

(a) The Criminal Justice Coordinating Council shall include the following members:

- (1) Mayor, District of Columbia (Chair);
- (2) Chairman, Council of the District of Columbia;
- (3) Chairperson, Judiciary Committee, Council of the District of Columbia;
- (4) Chief Judge, Superior Court of the District of Columbia;
- (5) Chief, Metropolitan Police Department;
- (6) Director, District of Columbia Department of Corrections;
- (7) Attorney General for the District of Columbia;
- (8) Director, Department of Youth Rehabilitation Services;
- (9) Director, Public Defender Service;
- (10) Director, Pretrial Services Agency;
- (11) Director, Court Services and Offender Supervision Agency;
- (12) United States Attorney for the District of Columbia;
- (13) Repealed;
- (14) Director, Federal Bureau of Prisons;
- (15) Chair, United States Parole Commission; and
- (16) Repealed;
- (17) Repealed;
- (18) The United States Marshal, Superior Court of the District of Columbia.

(b) Repealed.

(Oct. 3, 2001, D.C. Law 14-28, § 1504, 48 DCR 6981; June 19, 2013, D.C. Law 19-320, § 106, 60 DCR 3390.)

Section references. — This section is referenced in § 24-1302.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 substituted “Attorney General for the District of Columbia” for “Corporation Counsel for the District of Columbia” in (a)(7); substituted “Department of Youth Rehabilitation Services” for “Department of Human Services’ Youth Rehabilitation Services” in (a)(8); repealed (a)(13), (a)(16), and (a)(17); added (a)(18) and made related changes; and repealed (b), which read: “Mem-

bership of the Authority members shall expire upon the dissolution of the Authority.”

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

SUBTITLE V. HARBOR, GAME AND FISH LAWS.

CHAPTER 43. GAME AND FISH LAWS.

Sec.
22-4331. Penalties; prosecutions.

§ 22-4331. Penalties; prosecutions.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto, shall be conducted in the name of the District of Columbia by the Corporation Counsel or any Assistant Corporation Counsel.

(Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 4; May 21, 1994, D.C. Law 10-119, § 11(a), 41 DCR 1639; June 11, 2013, D.C. Law 19-317, § 238, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 44. HARBOR REGULATIONS.

Sec.
22-4402. Throwing or depositing matter in Potomac River.

Sec.
22-4404. Penalties for violation of § 22-4403.

§ 22-4402. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below highwater mark, unless for the purpose of making a wharf, after permission has been obtained from the Mayor of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not more than the amount set forth in § 22-3571.01, or by imprisonment not exceeding 6 months, or both, in the discretion of the court.

(Feb. 3, 1913, 37 Stat. 656, ch. 25; June 11, 2013, D.C. Law 19-317, § 239, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$100” in (d).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-4404. Penalties for violation of § 22-4403.

Any person who shall violate any provision of § 22-4403 shall for each such offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(Mar. 3, 1901, 31 Stat. 1336, ch. 854, § 902; Aug. 23, 1958, 72 Stat. 815, Pub. L. 85-730, § 7; June 11, 2013, D.C. Law 19-317, § 201(x), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300”.

Legislative history of Law 19-317. — See note to § 22-4402.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE VI. REGULATION AND POSSESSION OF WEAPONS.

CHAPTER 45. WEAPONS AND POSSESSION OF WEAPONS.

Sec.
22-4502. Additional penalty for committing crime when armed.
22-4503. Unlawful possession of firearm.
22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.
22-4514. Possession of certain dangerous weapons prohibited; exceptions.

Sec.
22-4515. Penalties.
22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.

§ 22-4501. Definitions.

Section references. — This section is referenced in § 5-113.32, § 7-2508.01, § 16-2305.02, § 16-2333, § 16-4205, § 22-1804a,

§ 22-2104.01, § 22-4504, § 24-221.01b, § 24-403, § 24-403.01, § 24-408, and § 24-921.

CASE NOTES

ANALYSIS

Dangerous weapon.
Knuckles.

Dangerous weapon.

Defendant could not reasonably claim that he had no notice that his conduct of carrying a “trench knife” was prohibited; thus, defendant

was properly convicted under D.C. Code § 22-4514. *Thompson v. United States*, — A.3d —, 2013 D.C. App. LEXIS 12 (Jan. 17, 2013).

Knuckles.

Definition of “knuckles” in D.C. Code § 22-4501(3) is not unconstitutionally vague. *Thompson v. United States*, — A.3d —, 2013 D.C. App. LEXIS 12 (Jan. 17, 2013).

§ 22-4502. Additional penalty for committing crime when armed.

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

(1) May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual

abuse while armed, and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years; and

(2) Shall, if such person is convicted more than once of having so committed a crime of violence, or a dangerous crime in the District of Columbia, or an offense in any other jurisdiction that would constitute a crime of violence or dangerous crime if committed in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first degree child sexual abuse while armed, not more than 30 years, and shall, if convicted of such second offense while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 10 years.

(3) Shall, if such person is convicted of first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, or first degree child sexual abuse while armed, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than the minimum and mandatory minimum sentences required by subsections (a)(1), (a)(2), (c) and (e) of this section and § 22-2104, and not more than life imprisonment or life imprisonment without possibility of release as authorized by § 24-403.01(b-2); § 22-2104; § 22-2104.01; and §§ 22-3002, 22-3008, and 22-3020.

(4) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offenses defined by this section are Class A felonies.

(b) Repealed.

(c) Any person sentenced pursuant to paragraph (1), (2), or (3) of subsection (a) above for a conviction of a crime of violence or a dangerous crime while armed with any pistol or firearm, shall serve a mandatory-minimum term of 5 years, if sentenced pursuant to paragraph (1) of subsection (a) of this section, or 10 years, if sentenced pursuant to paragraph (2) of subsection (a) of this section, and such person shall not be released, granted probation, or granted suspension of sentence, prior to serving such mandatory-minimum sentence.

(d) Repealed.

(e)(1) Subchapter I of Chapter 9 of Title 24 shall not apply with respect to any person sentenced under paragraph (2) of subsection (a) of this section or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section.

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.

(e-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(f) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(g) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(July 8, 1932, 47 Stat. 560, ch. 465, § 2; Dec. 27, 1967, 81 Stat. 737, Pub. L. 90-226, title VI, § 605; July 29, 1970, 84 Stat. 600, Pub. L. 91-358, title II, § 205; Mar. 9, 1983, D.C. Law 4-166, §§ 3-7, 30 DCR 1082; Dec. 7, 1985, D.C. Law 6-69, § 9, 32 DCR 4587; July 28, 1989, D.C. Law 8-19, § 3(b), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(b), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(a), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(b)(1), (2), 48 DCR 1873; Dec. 10, 2009, D.C. Law 18-88, § 219(a), 56 DCR 7413; Sept. 29, 2012, D.C. Law 19-170, § 3(b), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, § 310, 60 DCR 2064.)

Section references. — This section is referenced in § 4-751.01, § 5-113.32, § 22-4513, § 23-1322, § 24-221.06, § 24-403, § 24-403.01, and § 24-467.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (e-1).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Instructions.

—Assault offenses, instructions.

Merger of offenses.

Significant bodily injury.

Weight and sufficiency of evidence.

—Assault offenses generally, weight and sufficiency of evidence.

Instructions.

— Assault offenses, instructions.

Trial court’s jury instruction defining significant bodily injury under the assault of a police officer while armed statute, D.C. Code §§ 22-405(c) and 22-4502, as an injury that required hospitalization or immediate medical attention was proper as the assault of a police officer and the felony assault amendments, enacted at the same time, both used the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defined that phrase; the felony assault definition applied under both statutes. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Merger of offenses.

Defendant’s four convictions for assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, did not merge into one

conviction for sentencing because, while defendant pointed a gun at the four victims and demanded money, a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people. As the second gunman was defendant’s co-conspirator, defendant was vicariously liable for the second gunman’s four assaults, one for each member of the group of four victims. *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Defendant’s two convictions for possession of a firearm during a crime of violence, under D.C. Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was “armed with” or had “readily available” a dangerous weapon, which could, but need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of “possession” of a “firearm.” *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Significant bodily injury.

Significant bodily injury under the assault of a police officer while armed statute, D.C. Code §§ 22-405(c) and 22-4502, is defined as an injury that requires hospitalization or immediate medical attention since the assault of a police officer and the felony assault amendments, enacted at the same time, both use the same language to characterize the crime (significant bodily injury), and the latter, D.C. Code § 22-404(a)(2), defines that phrase; the felony assault definition applies under both statutes. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

Weight and sufficiency of evidence.

— Assault offenses generally, weight and sufficiency of evidence.

Evidence was sufficient to support defendant's convictions, on a conspiracy theory, for aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502, and assault with intent to rob while armed, under D.C. Code §§ 22-401 and 22-4502, because (1) one of the victims testified that the victim saw defendant put on a black ski mask and lead other perpetrators to the four victims; (2) defendant pointed a gun at the victims and demanded

money; (3) a second gunman, who walked behind the victims, aimed the gun at the group, moving the gun between different people; (4) after defendant took money from one of the victims, that victim and defendant wrestled over defendant's gun; (5) defendant fled with defendant's gun; and (6) the second gunman kept the gun trained on that victim and shot that victim about 15 seconds after defendant fled. *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

Sufficient evidence supported defendant's conviction for assault of a police officer while armed under D.C. Code §§ 22-405 and 22-4502 where: (1) defendant backed the van into a police officer; (2) the officer was driving a police vehicle, wearing an officer's uniform, and spoke with defendant as a police officer, through defendant's open car window; (3) defendant's backing into the officer, even slowly, created a grave risk of significant bodily injury, as the officer as standing, alone, at the side of a busy highway and could have been knocked very easily into oncoming traffic; and (4) the van was considered a dangerous weapon if it was used in a manner that actually caused a risk of serious injury. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

§ 22-4503. Unlawful possession of firearm.

(a) No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person:

- (1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
- (2) Is not licensed under § 22-4510 to sell weapons, and the person has been convicted of violating this chapter;
- (3) Is a fugitive from justice;
- (4) Is addicted to any controlled substance, as defined in § 48-901.02(4);
- (5) Is subject to a court order that:

(A)(i) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) Remained in effect after the person failed to appear for a hearing of which the person received actual notice;

(B) Restrains the person from assaulting, harassing, stalking, or threatening the petitioner or any other person named in the order; and

(C) Requires the person to relinquish possession of any firearms;

(6) Has been convicted within the past 5 years of an intrafamily offense, as defined in D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of another jurisdiction.

(b)(1) A person who violates subsection (a)(1) of this section shall be sentenced to imprisonment for not more than 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of 1 year, unless she or he

has a prior conviction for a crime of violence other than conspiracy, in which case she or he shall be sentenced to imprisonment for not more than 15 years and shall be sentenced to a mandatory-minimum term of 3 years.

(2) A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.

(3) In addition to any other penalty provided under this subsection, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(c) A person who violates subsection (a)(2) through (a)(6) of this section shall be sentenced to not less than 2 years nor more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

(d) For the purposes of this section, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4), or a crime under the laws of any other jurisdiction that involved conduct that would constitute a crime of violence if committed in the District of Columbia, or conduct that is substantially similar to that prosecuted as a crime of violence under the District of Columbia Official Code.

(2) "Fugitive from justice" means a person who has:

(A) Fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; or

(B) Escaped from a federal, state, or local prison, jail, halfway house, or detention facility or from the custody of a law enforcement officer.

(July 8, 1932, 47 Stat. 651, ch. 465, § 3; June 29, 1953, 67 Stat. 93, ch. 159, § 204(b); May 21, 1994, D.C. Law 10-119, § 15(b), 41 DCR 1639; Apr. 24, 2007, D.C. Law 16-306, § 223(c), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 219(b), 56 DCR 7413; June 3, 2011, D.C. Law 18-377, § 13, 58 DCR 1174; Sept. 29, 2012, D.C. Law 19-170, § 3(c), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, §§ 240(a), 304, 60 DCR 2064.)

Section references. — This section is referenced in § 7-2502.03, § 7-2507.06a, § 16-801, § 22-4507, § 22-4508, § 22-4510, § 23-1322, § 24-403, § 24-403.01, and § 24-906.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (b)(3); and substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$15,000" in (c).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Instructions.

Jury trial.

Weight and sufficiency of evidence.

Instructions.

Defendant was entitled to have his conviction for unlawful possession of a firearm by a con-

victed felon vacated, because the trial judge erred in responding to the jury's request for clarification of the mens rea elements of the offense, erroneously telling the jury that it could find defendant guilty if defendant knowingly possessed the frame or receiver of a firearm, even if defendant knew nothing else. *Myers v. United States*, 56 A.3d 1148, 2012 D.C.

App. LEXIS 485 (2012).

Jury trial.

Defendant was entitled to a jury trial on a felon-in-possession charge, which carried a maximum penalty of ten years imprisonment under D.C. Code § 22-4503(b); the trial court's failure to obtain a written or oral waiver from defendant before conducting a bench trial on the charge was structural error likely to have an effect on the fairness, integrity or public reputation of the judicial proceedings. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

Weight and sufficiency of evidence.

Evidence was sufficient to prove that defendant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because

defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. *Smith v. United States*, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

Defendant was convicted of first-degree burglary, attempted robbery, and unlawfully possessing a firearm after a felony conviction in violation of D.C. Code § 22-4503(a)(2), because he entered the victim's apartment while holding a gun, walked into her bedroom, and demanded money. *Fortune v. United States*, 59 A.3d 949, 2013 D.C. App. LEXIS 11 (2013).

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, or any deadly or dangerous weapon capable of being so concealed. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

(b) No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 651, ch. 465, § 4; Nov. 4, 1943, 57 Stat. 586, ch. 296; Aug. 4, 1947, 61 Stat. 743, ch. 469; June 29, 1953, 67 Stat. 94, ch. 159, § 204(c); July 28, 1989, D.C. Law 8-19, § 3(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 3(c), 37 DCR 24; May 21, 1994, D.C. Law 10-119, § 15(c), 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 302, 41 DCR 2608; May 20, 2009, D.C. Law 17-388, § 2(c), 56 DCR 1162; Sept. 29, 2012, D.C. Law 19-170, § 3(d), 59 DCR 5691; June 11, 2013, D.C. Law 19-317, §§ 240(b), 309(a), 60 DCR 2064.)

Section references. — This section is referenced in § 7-2507.06a, § 22-2511, § 22-4505, § 22-4513, § 23-1322, § 24-221.06, § 24-261.02, and § 24-467.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$5,000” in (a)(1), and for “not more than \$10,000” in (a)(2); and added (c).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Admissibility of evidence.

—In general.

Dangerous weapon.

Defenses.

Elements of offense, instructions.

Merger of offenses.

Nature and elements of offenses.

—Operability of weapon, nature and elements of offenses.

Self-defense, generally.

Admissibility of evidence.

— In general.

Trial court properly denied defendant’s motion to suppress a gun and ammunition found on his person, as police had reasonable suspicion sufficient to make a Terry stop based on his unprovoked flight, at night, in a high crime area, after officers indicated that they were investigating recent robberies in the area and wanted to know if he had any weapons on him. *Henson v. United States*, 55 A.3d 859, 2012 D.C. App. LEXIS 517 (2012).

Dangerous weapon.

Government was not required to prove that defendant intended to use the shotgun and sword as dangerous weapons because the two things had no natural purpose other than to inflict injury. *Gorbey v. United States*, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

Defenses.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer’s

registration of the subject gun in Maryland, because (1) the exception was read in pari materia with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer’s gun possession in the District of Columbia (D.C.) on D.C. residency, as registration expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. *Hargrove v. United States*, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammunition in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

Because defendant was neither a law enforcement officer with general authority nor an individual with limited law enforcement authority who was acting within the scope of his authority, he was not considered a law enforcement officer for purposes of D.C. Code § 22-4505 and was not entitled to the exemption under the statute; defendant, who only possessed authority to act in a law enforcement capacity while he was working for his private employer, was not a “law enforcement officer” because outside of specific times when he was working, defendant did not have general police authority or authorization to carry a gun. *Thorne v. United States*, 55 A.3d 873, 2012 D.C.

App. LEXIS 518 (2012).

Elements of offense, instructions.

Although the evidence was sufficient to convict defendant of carrying a pistol without a license in violation of D.C. Code § 22-4504(a), the trial court's instruction to the jury was significantly erroneous so as to satisfy the plain error standard because the trial court failed to instruct the jury that operability was an essential element of the offense; operability of the weapon was an element of the offense to be proven by the government, but the trial court instructed that it was not, and the erroneous instruction took away the government's burden of proof on an essential element of the offense. *Nelson v. United States*, 55 A.3d 389, 2012 D.C. App. LEXIS 510 (2012).

Merger of offenses.

Defendant's two convictions for possession of a firearm during a crime of violence, under D.C. Code § 22-4504(b), did not merge with the underlying convictions for armed robbery, under D.C. Code §§ 22-2801 and 22-4502, and aggravated assault while armed, under D.C. Code §§ 22-404.01 and 22-4502 because the offenses required different elements of proof. The armed robbery and aggravated assault while armed offenses required proof that defendant was "armed with" or had "readily available" a dangerous weapon, which could, but need not, have been a firearm, while the possession of a firearm during a crime of violence offenses required proof of elements not required by the armed enhancement statute — that is, proof of "possession" of a "firearm." *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

§ 22-4505. Exceptions to § 22-4504.

Section references. — This section is referenced in § 6-223.

Nature and elements of offenses.

— Operability of weapon, nature and elements of offenses.

There was legally sufficient evidence to show that a pistol was operable because the revolver that the police officers seized from the waist band of defendant's pants was fully loaded; once defendant opened his window and the police officers were able to reach him, defendant announced that he was carrying a gun; *Nelson v. United States*, 55 A.3d 389, 2012 D.C. App. LEXIS 510 (2012).

Self-defense, generally.

In a criminal trial in which defendant was convicted for assault with a dangerous weapon under D.C. Code § 22-402, possession of a firearm during dangerous offenses under D.C. Code § 22-4504(b), and being a felon in possession of a firearm under 18 U.S.C.S. § 922(g)(1), defendant's argument that the district court improperly instructed the jury with respect to a claim of self-defense failed on appeal because there was no reasonable likelihood that the jury was confused or misled into diluting the government's burden of proof or shifting the burden of proof to defendant based on all the instructions; the district court specifically instructed the jury that the government had to disprove defendant's self-defense claim beyond a reasonable doubt, and it adequately emphasized that the burden of proof did not shift when defendant voluntarily undertook to present a specific defense. *United States v. Purvis*, 706 F.3d 520, 2013 U.S. App. LEXIS 2867 (D.C. Cir. 2013).

CASE NOTES

ANALYSIS

Construction with other law.
Evidence held insufficient.

Construction with other law.

Retired Metropolitan Police Department officer could not invoke the exception in D.C. Code § 22-4505(b) when charged with carrying a pistol without a license, based on the officer's registration of the subject gun in Maryland, because (1) the exception was read in *pari materia* with the registration provisions of D.C. Code tit. 7, and (2) those provisions conditioned the officer's gun possession in the District of Columbia (D.C.) on D.C. residency, as registra-

tion expired if the officer left D.C., and on the discretion of the D.C. Chief of Police to grant or deny registration. *Hargrove v. United States*, 55 A.3d 852, 2012 D.C. App. LEXIS 515 (2012).

Evidence held insufficient.

Because defendant was neither a law enforcement officer with general authority nor an individual with limited law enforcement authority who was acting within the scope of his authority, he was not considered a law enforcement officer for purposes of D.C. Code § 22-4505 and was not entitled to the exemption under the statute; defendant, who only possessed authority to act in a law enforcement capacity while he was working for his private

employer, was not a “law enforcement officer” because outside of specific times when he was working, defendant did not have general police authority or authorization to carry a gun. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

It was not plain that defendant, in his capacity as an off-duty special conservator of the peace from the State of Virginia, had a Second Amendment right to carry a gun and ammuni-

tion in the District of Columbia because defendant did not show a clear or obvious violation of the Second Amendment, either at the time of his trial for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition, or at the time of his appeal; there is no clear right to carry a firearm outside the home. *Thorne v. United States*, 55 A.3d 873, 2012 D.C. App. LEXIS 518 (2012).

§ 22-4514. Possession of certain dangerous weapons prohibited; exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, knuckles, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, however, that machine guns, or sawed-off shotgun, knuckles, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-4510.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in § 22-4515 unless the violation occurs after such person has been convicted in the District of Columbia of a violation of this section, or of a felony, either in the District of Columbia or in another jurisdiction, in which case such person shall be imprisoned for not more than 10 years.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 654, ch. 465, § 14; June 29, 1953, 67 Stat. 94, ch. 159, § 204(h); May 21, 1994, D.C. Law 10-119, § 15(k), 41 DCR 1639; June 12, 1999, D.C. Law 12-284, § 6, 46 DCR 1328; May 15, 2009, D.C. Law 17-390, § 3(b), 55 DCR 11030; June 11, 2013, D.C. Law 19-317, § 309(b), 60 DCR 2064.)

Section references. — This section is referenced in § 10-503.26, § 16-2301, § 22-951, § 22-4508, § 22-4510, and § 22-4513.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Knife.

Weight and sufficiency of evidence.

Knife.

Defendant could not reasonably claim that he had no notice that his conduct of carrying a "trench knife" was prohibited; thus, defendant was properly convicted under D.C. Code § 22-4514. *Thompson v. United States*, — A.3d —, 2013 D.C. App. LEXIS 12 (Jan. 17, 2013).

Weight and sufficiency of evidence.

Evidence was sufficient to prove that defen-

dant had constructive possession of a firearm and boxes of ammunition, all of which were found in a backpack next to her bed, because defendant was the sole occupant of the bedroom during the week prior to the execution of the search warrant, with ample ability to control the backpack and its contents; because the backpack was conspicuously located in her bedroom next to defendant's bed, a juror could reasonably infer that she had the requisite intent to exercise control over the backpack. *Smith v. United States*, 55 A.3d 884, 2012 D.C. App. LEXIS 521 (2012).

§ 22-4515. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 1 year, or both.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15; June 11, 2013, D.C. Law 19-317, § 240(c), 60 DCR 2064.)

Section references. — This section is referenced in § 22-4504 and § 22-4514.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000".

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means: (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited; or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Mayor pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of Chapter 15 of Title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his or her residence or place of business.

(d) Whoever violates this section shall: (1) for the first offense, be sentenced to a term of imprisonment of not less than 1 and not more than 5 years; (2) for the second offense, be sentenced to a term of imprisonment of not less than 3 and not more than 15 years; and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than 5 years and not more than 30 years. In the case of a person convicted of a third or subsequent violation of this section, Chapter 402 of Title 18, United States Code (Federal Youth Corrections Act) shall not apply. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the third or subsequent conviction for an offense defined by this section is a Class A felony.

(e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 8, 1932, 47 Stat. 654, ch. 465, § 15A; July 29, 1970, 84 Stat. 603, Pub. L. 91-358, title II, § 209; May 21, 1994, D.C. Law 10-119, § 15(l), 41 DCR 1639; June 8, 2001, D.C. Law 13-302, § 6(b), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 309(c), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (e).

Legislative history of Law 19-317. — See note to § 22-4502.

Editor's notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

TITLE 23. CRIMINAL PROCEDURE.

Chapter

5. Warrants and Arrests.

7. Extradition and Fugitives from Justice.

11. Professional Bondsmen.

13. Bail Agency [Pretrial Services Agency] and Pretrial Detention.

19. Crime Victims' Rights.

CHAPTER 1. GENERAL PROVISIONS.

§ 23-110. Remedies on motion attacking sentence.

Section references. — This section is referenced in § 11-2601, § 22-4132, and § 22-4133.

CASE NOTES

ANALYSIS

Counsel for accused.

—Adequacy of representation by counsel for accused.

Plea agreement.

Evidence.

—Suppression of or failure to disclose evidence.

Counsel for accused.

— Adequacy of representation by counsel for accused.

Because the trial court erred in finding that trial counsel made a strategic choice not to consult an expert witness, since trial counsel's failure to consult an expert fell below professional norms as there was a reasonable probability that competent counsel would have called a narcotics expert at trial and such expert testimony, in conjunction with other evidence presented at trial, would have created a reasonable doubt that a prisoner was guilty of unlawful distribution of heroin, the judgment had to be reversed and the case had to be remanded for a new trial. *Young v. United States*, 56 A.3d 1184, 2012 D.C. App. LEXIS 626 (2012).

Plea agreement.

Inmate's motion to vacate his conviction under D.C. Code § 23-110 was remanded for an evidentiary hearing under D.C. Code § 17-306 on the prejudice prong of his ineffective assis-

tance claim as the issue of whether the inmate showed a reasonable probability of a different outcome had counsel properly advised him of a plea offer since the plea offer was wired was not raised until after the evidentiary record was closed. *Benitez v. United States*, 60 A.3d 1230, 2013 D.C. App. LEXIS 47 (2013).

Evidence.

— Suppression of or failure to disclose evidence.

Where police officers' testimony, and the inferences reasonably drawn from it, supported the trial court's findings that as a prisoner was being stopped, he looked up and, upon seeing other officers arrive just outside the windowed restaurant, immediately retreated into the restaurant and discarded a brown paper in his possession, the officers retrieved the paper with its ten zip lock bags, and once both suspects had been stopped and the officers identified them as the participants of the exchange, they were placed under arrest, there was probable cause and the prisoner was not entitled to have evidence suppressed; thus, the prisoner was not entitled to relief based on counsel's failure to move to suppress evidence. *Young v. United States*, 56 A.3d 1184, 2012 D.C. App. LEXIS 626 (2012).

Applied in *Longus v. United States*, 52 A.3d 836, 2012 D.C. App. LEXIS 476 (2012).

§ 23-112. Consecutive and concurrent sentences.

CASE NOTES

Applied in *Snowden v. United States*, 52 A.3d 858, 2012 D.C. App. LEXIS 475 (2012).

CHAPTER 5. WARRANTS AND ARRESTS.

Subchapter III. Wire Interception and Interception of Oral Communications

Sec.

23-542. Interception, disclosure, and use of wire or oral communications prohibited.

23-543. Possession, sale, distribution, manu-

facture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

Subchapter V. Arrest Without Warrant

Sec.

23-581. Arrests without warrant by law enforcement officers.

Subchapter III. Wire Interception and Interception of Oral Communications.

§ 23-542. Interception, disclosure, and use of wire or oral communications prohibited.

(a) Except as otherwise specifically provided in this subchapter, any person who in the District of Columbia —

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication;

shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than five years, or both; except that paragraphs (2) and (3) of this subsection shall not apply to the contents of any wire or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

(b) It shall not be unlawful under this section for —

(1) an operator of a switchboard, or an officer, agent, or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication, in the normal course of his employment while engaged in any activity which is a necessary incident to the rendering of his service or to the protection of the rights or property of the carrier of such communication, or to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, under this subchapter, is authorized to intercept a wire or oral communication, but no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or

(3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

(July 29, 1970, 84 Stat. 617, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(a), 60 DCR 2064.)

Section references. — This section is referenced in § 23-544 and § 23-556.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited.

(a) Except as otherwise specifically provided in subsection (b) of this section, any person who in the District of Columbia —

(1) willfully possesses, sells, distributes, manufactures, or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(2) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of —

(A) any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(B) any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than five years, or both.

(b) It shall not be unlawful under this section for —

(1) a communication common carrier or an officer, agent, or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier’s business; or

(2) a person under contract with the Government of the United States, a State or a political subdivision thereof, or the District of Columbia, or an officer, agent, or employee of the Government of the United States, a State or a political subdivision thereof, or the District of Columbia; to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the United States, a State or political subdivision thereof, the District of Columbia, or a communication common carrier.

(July 29, 1970, 84 Stat. 618, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-544 and § 23-556.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted

“not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000” in (a).

Legislative history of Law 19-317. — See note to § 23-542.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter V. Arrest Without Warrant.

§ 23-581. Arrests without warrant by law enforcement officers.

(a)(1) A law enforcement officer may arrest, without a warrant having previously been issued therefor —

(A) a person who he has probable cause to believe has committed or is committing a felony;

(B) a person who he has probable cause to believe has committed or is committing an offense in his presence;

(C) a person who he has probable cause to believe has committed or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence; and

(D) a person whom he has probable cause to believe has committed any offense which is listed in paragraph (3) of this section, if the officer has reasonable grounds to believe that, unless the person is immediately arrested, reliable evidence of alcohol or drug use may become unavailable or the person may cause personal injury or property damage.

(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:

(A) The following offenses specified in the Act entitled “An Act to establish a code of law for the District of Columbia”, approved March 3, 1901, and listed in the following table:

Offense:	Specified in —
Assault	section 806 (D.C. Code, sec. 22-404).
Unlawful entry	section 824 (D.C. Code, sec. 22-3302).
Malicious burning, destruction or injury of another’s property	section 848 (D.C. Code, sec. 22-303).

(B) The following offense specified in the Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; 53 DCR 8610):

Offense:	Specified in —
Voyeurism	section 105 (D.C. Code, sec. 22-3531).

(C) The following offenses specified in the District of Columbia Theft and White Collar Crimes Act of 1982, and listed in the following table:

Offense:	Specified in —
Theft of property valued less than \$250 ...	section 111 [D.C. Official Code, § 22-3211].
Receiving stolen property	section 132 [D.C. Official Code, § 22-3232].
Shoplifting	section 113 [D.C. Official Code, § 22-3213].

(D) Attempts to commit the following offenses specified in the Act and listed in the following table:

Offense:

Theft of property valued in excess of \$250 .
Unauthorized use of vehicles

Specified in —

section 111 [D.C. Official Code, § 22-3211].
section 115 [D.C. Official Code, § 22-3215].

(E) The following offenses specified in the Illegal Dumping Enforcement Act of 1994 [Chapter 9 of Title 8], and listed in the following table:

Offense:

Unauthorized Disposal of Solid Waste

Specified in —

Section 3. [D.C. Official Code, § 8-902]

(F) The following offenses specified in section 113.7 of Title 12A of the District of Columbia Municipal Regulations (12A DCMR § 113.7).

Offense:

Illegal construction

Specified in —

section 113.7 (12A DCMR § 113.7)

(3) The offenses which are referred to in paragraph (1)(D) of this section are the following offenses specified in the District of Columbia Traffic Act of 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 et seq.), and listed in the following table:

Offense:

Aggravated reckless driving

Specified in —

section 9(b-1) (D.C. Official Code § 50-2201.04(b-1))

Fleeing from the scene of an accident

section 10(a) (D.C. Official Code § 50-2201.05(a))

Operating or physically controlling a vehicle when under the influence of intoxicating liquor or drugs, when operating ability is impaired by intoxicating liquor, or when the operator's blood, breath, or urine contains the amount of alcohol which is prohibited by section 10(b)

section 10(b) (D.C. Official Code § 50-2201.05(b))

Operating a motor vehicle when the operator's permit is revoked or suspended

section 13(e) (D.C. Official Code § 50-1403.01(e)).

(a-1) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an intrafamily offense as provided in section 16-1031(a).

(a-2) A law enforcement officer may arrest a person without an arrest warrant if the officer has probable cause to believe the person has committed an offense as provided in Chapter 23 of Title 22.

(a-3) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed an offense as provided in sections 22-3312.01, 22-3312.02, and 22-3312.03.

(a-4) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of unlawful entry of a motor vehicle as provided in [§ 22-1341].

(a-5) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of tampering with a detection device as provided in [§ 22-1211].

(a-6) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of engaging in an unlawful protest targeting a residence as provided in [§ 22-2752].

(a-7) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, or lewd, indecent, or obscene acts, or sexual proposal to a minor, as provided in §§ 22-3006, 22-3010.01, and 22-1312.

(a-8) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of stalking as provided in § 22-3133.

(a-9) A law enforcement officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed the offense of presenting a fraudulent identification document for the purpose of entering an establishment possessing an on-premises retailer's license, an Arena C/X license, or a temporary license as provided in § 25-1002(b)(2).

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or who he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23-901.

(July 29, 1970, 84 Stat. 629, Pub. L. 91-358, title II, § 210(a); Dec. 1, 1982, D.C. Law 4-164, § 601(g), 29 DCR 3976; Aug. 2, 1983, D.C. Law 5-24, § 4, 30 DCR 3341; Apr. 30, 1988, D.C. Law 7-104, § 7(d), 35 DCR 147; April 30, 1990, D.C. Law 8-261, § 3, 37 DCR 5001; May 5, 1992, D.C. Law 9-96, § 5, 38 DCR 7274; Nov. 17, 1993, D.C. Law 10-54, § 8, 40 DCR 5450; Feb. 5, 1994, D.C. Law 10-68, § 55(a), 40 DCR 6311; May 20, 1994, D.C. Law 10-117, § 8(c), 41 DCR 524; June 12, 2001, D.C. Law 13-309, § 3, 48 DCR 1613; Mar. 13, 2004, D.C. Law 15-105, § 93, 51 DCR 881; Oct. 18, 2005, D.C. Law 16-24, § 3, 52 DCR 8080; Dec. 10, 2009, D.C. Law 18-88, § 222, 56 DCR 7413; May 26, 2011, D.C. Law 18-374, § 4, 58 DCR 715; June 3, 2011, D.C. Law 18-377, § 15, 58 DCR 1174; June 8, 2013, D.C. Law 19-316, § 5, 60 DCR 1713; June 19, 2013, D.C. Law 19-320, § 202, 60 DCR 3390.)

Section references. — This section is referenced in § 23-524 and § 23-582.

Effect of amendments.

The 2013 amendment by D.C. Law 19-316 substituted "Aggravated reckless drivingsection 9(b-1) of the District of Columbia Traffic Act, 1925, approved March 3, 1925, (43 Stat. 1123; D.C. Official Code § 50-2201.04(b-1)) for "Reckless drivingsection 9(b) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1123; D.C. Official Code § 50-2201.04(b))" in the table in (a)(3).

The 2013 amendment by D.C. Law 19-320 substituted "misdemeanor sexual abuse, misdemeanor sexual abuse of a child or minor, or lewd, indecent, or obscene acts, or sexual proposal to a minor, as provided in §§ 22-3006, 22-3010.01, and 22-1312" for "misdemeanor sexual abuse or misdemeanor sexual abuse of a

child or minor as provided in sections 22-3006 and 22-3010.01" in (a-7); and added (a-8) and (a-9).

Legislative history of Law 19-316. — Law 19-316, the "Reckless Driving Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-823. The Bill was adopted on first and second readings on Nov. 1, 2012, and Nov 15, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-630 and transmitted to Congress for its review. D.C. Law 19-316 became effective on June 8, 2013.

Legislative history of Law 19-320. — Law 19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its

review. D.C. Law 19-320 became effective on June 19, 2013. 19-316 provided that the act shall apply as of June 1, 2013.

Editor's notes. — Section 8 of D.C. Law

CHAPTER 7. EXTRADITION AND FUGITIVES FROM JUSTICE.

Sec.

23-703. Failure to appear.

§ 23-703. Failure to appear.

Any person released pursuant to section 23-702 who fails to appear as required shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than five years, or both.

(July 29, 1970, 84 Stat. 632, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$5,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 11. PROFESSIONAL BONDSMEN.

Sec.

23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

Sec.

23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

23-1111. Penalties.

§ 23-1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.

(a) It shall be the duty of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which the business shall be carried on, and no person or corporation shall,

either as principal, or as agent, clerk, or representative of another, engage in the bonding business in either court until he shall, by order of the court, be authorized to do so. The courts, in making these rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the bonding business, who has ever been convicted of an offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of the courts to require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of these persons stating that he will abide by the terms and provisions of this chapter. Each of the courts shall require the authority of each of those persons to be renewed from time to time at such periods as the court may by rule provide, and before the authority shall be renewed the court shall require from each of those persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of the affidavits shall be guilty of perjury.

(b) Each court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law enforcement agencies of the District of Columbia, of the following matters:

(1) the full name and address of the person for whom the bond is executed (referred to in this subsection as the "defendant") and the full name and address of his employer, if any;

(2) the offense with which the defendant is charged;

(3) the name of the court or officer authorizing the defendant's admission to bail;

(4) the amount of the bond;

(5) the name of the person who called the bondsman, if other than the defendant;

(6) the amount of the bondsman's charge for executing the bond;

(7) the full name and address of the person to whom the bondsman presented his bill for the charge;

(8) the full name and address of the person paying the charge; and

(9) the manner of payment of the charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than six months, or both, and if he is a bondsman shall be disqualified from thereafter engaging in any manner in the bonding business for such period of time as the trial judge shall order.

(July 29, 1970, 84 Stat. 637, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.

(a) The judges of the Superior Court of the District of Columbia shall have the authority to appoint some official of the Metropolitan Police Department to act as a clerk of the court with authority to take bail or collateral from persons charged with offenses triable in the Superior Court at all times when the court is not open and its clerks accessible. The official so appointed shall have the same authority at those times with reference to taking bonds or collateral as the clerk of the Municipal Court had on March 3, 1933; shall receive no compensation for these services other than his regular salary; shall be subject to the orders and rules of the Superior Court in discharge of his duties, and may be removed as the clerk at any time by the judges of the court. The United States District Court for the District of Columbia shall have power to authorize the official appointed by the Superior Court to take bond of persons arrested upon writs and process from that court in criminal cases between 4 o’clock postmeridian and 9 o’clock antemeridian and upon Sundays and holidays, and shall have power at any time to revoke the authority granted by it.

(b)(1) An officer or member of the Metropolitan Police Department who arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring the person to appear before an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court.

(2) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

(3) No citation may be issued under paragraph (1) or (2) unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

(4) Whoever willfully fails to appear as required in a citation, shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both. Prosecution under this paragraph shall be by

the prosecuting officer responsible for prosecuting the offense for which the citation is issued.

(July 29, 1970, 84 Stat. 638, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(a), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 283(e), 60 DCR 2064.)

Section references. — This section is referenced in § 25-781, § 25-785, and § 25-1002.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than the maximum provided for the misdemeanor for which such citation was issued” in (b)(4).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1111. Penalties.

Any person violating any provision of this chapter shall be fined not less than \$50 and not more than the amount set forth in [§ 22-3571.01], or imprisoned for not less than ten nor more than sixty days, or both, where no other penalty is provided by this chapter; and if the person so convicted is (1) a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office, (2) a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order, or (3) an attorney at law, he shall be subject to suspension or disbarment as attorney at law.

(July 29, 1970, 84 Stat. 639, Pub. L. 91-358, title II, § 210(a); June 11, 2013, D.C. Law 19-317, § 283(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in [§ 22-3571.01]” for “nor more than \$100”.

Legislative history of Law 19-317. — See note to § 23-1108.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13. BAIL AGENCY [PRETRIAL SERVICES AGENCY] AND PRETRIAL DETENTION.

Subchapter II. Release and Pretrial Detention

Sec.

23-1322. Detention prior to trial.

23-1327. Penalties for failure to appear.

23-1328. Penalties for offenses committed during release.

Sec.

23-1329. Penalties for violation of conditions of release.

23-1331. Definitions.

Subchapter II. Release and Pretrial Detention.

§ 23-1322. Detention prior to trial.

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required, and the safety of any other person and the community, the judicial officer shall order that the person be detained before trial.

(c) There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), or § 22-4503 (unlawful possession of a firearm); or

(8) Violated [subchapter VIII of Chapter 25 of Title 7, § 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a).

(d)(1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or *sua sponte*, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h)(1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended for one or more additional periods not to exceed 20 days each on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(July 29, 1970, 84 Stat. 644, Pub. L. 91-358, title II, § 210(a); Sept. 17, 1982, D.C. Law 4-152, § 3, 29 DCR 3479; July 28, 1989, D.C. Law 8-19, § 2(a), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(a), 37 DCR 24; July 3, 1992, D.C. Law 9-125, § 3, 39 DCR 2134; Aug. 20, 1994, D.C. Law 10-151, § 602(a), 41 DCR 2608; May 16, 1995, D.C. Law 10-255, § 17, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 6, 42 DCR 1547; June 3, 1997, D.C. Law 11-273, § 3(b), 43 DCR 6168; June 3, 1997, D.C. Law 11-275, § 14(f), 44 DCR 1408; June 12, 2001, D.C. Law 13-310, § 2(b), 48 DCR 1648; May 17, 2002, D.C. Law 14-134, § 7, 49 DCR 408; May 5, 2007, D.C. Law 16-308, § 3(a), 54 DCR 942; Dec. 10, 2009, D.C. Law 18-88, § 223, 56 DCR 7413; Sept. 26, 2012, D.C. Law 19-171, § 78, 59 DCR 6190; June 19, 2013, D.C. Law 19-320, § 107(c), 60 DCR 3390.)

Section references. — This section is referenced in § 23-1321, § 23-1323, § 23-1324, and § 23-1329.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320

substituted “or § 22-4503 (unlawful possession of a firearm)” for “§ 22-4503 (unlawful possession of a firearm) or [§ 22-2511] (presence in a motor vehicle containing a firearm)” in (c)(7).

Legislative history of Law 19-320. — Law

19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by

the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

CASE NOTES

ANALYSIS

Construction and application.
Detention held improper.

Construction and application.

While D.C. Code § 23-1322(c)(2) does not specify whether or not “judicial” proceedings include other than criminal ones, the plain language of the statute appears to include judicial proceedings seeking divorce. *Bradshaw v. United States*, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

Detention held improper.

Trial court erred in ordering defendant, charged with solicitation of murder, held without bond pursuant to D.C. Code § 23-

1322(b)(1)(C), as it did not clearly consider the nexus between his past conduct and whether there was a serious risk that he would threaten, injure, or intimidate, or attempt to do so as to a prospective witness. *Bradshaw v. United States*, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

Trial court erred in ordering defendant held without bond pursuant to D.C. Code § 23-1322(b)(1)(C), as it did not adequately articulate its consideration of the requirement that it consider and determine whether any other combination of conditions would reasonably assure the safety of others as required by § 23-1322(b)(1). *Bradshaw v. United States*, 55 A.3d 394, 2012 D.C. App. LEXIS 509 (2012).

§ 23-1327. Penalties for failure to appear.

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of his sentence after conviction of any offense, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned for not less than ninety days and not more than 180 days, or (3) if he was released for appearance as a material witness, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is wilful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was wilful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice.

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(July 29, 1970, 84 Stat. 648, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(b), (c), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 283(g), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 23-1303, and § 23-1322.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317, in (a), substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in clause (1), for “not more than the maximum provided for each misdemeanor” in clause (2), and for “not more than \$1,000” in clause (3).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1328. Penalties for offenses committed during release.

(a) Any person convicted of an offense committed while released pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than 180 days if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); Aug. 20, 1994, D.C. Law 10-151, § 101(d), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 311(a), 60 DCR 2064.)

Section references. — This section is referenced in § 23-1303 and § 23-1322.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-317. — See note to § 23-1328.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1329. Penalties for violation of conditions of release.

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in [§ 22-3571.01].

(b)(1) Proceedings for revocation of release may be initiated on motion of the United States Attorney or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the person has violated any other condition of his release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than the amount set forth in [§ 22-3571.01], or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to § 23-1322(d)(7), may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law.

(e) A person who has been conditionally released and who violates a condition of that release by using a controlled substance or by failing to comply with the prescribed treatment for use of a controlled substance, may be ordered by the court, in addition to or in lieu of the penalties and procedures prescribed in subsections (a) through (d) of this section, to temporary placement in custody, when, in the opinion of the court, such action is necessary for treatment or to assure compliance with conditions of release. A person shall not

be subject to an order of temporary detention under this subsection, unless before any such violation and order, the person has agreed in writing to the imposition of such an order as a sanction for the person's violation of a condition of release.

(f)(1) Within 180 days of the effective date of this act [June 12, 2001], the Department of Corrections, in consultation with the Federal Bureau of Prisons, the Court Services and Offender Supervision Agency, and the Pretrial Services Agency, shall promulgate regulations, in accordance with [Chapter 5 of Title 2] to establish standards of conduct and discipline for persons released pursuant to § 23-1321(c)(1)(B)(xi). Such regulations shall set forth sanctions for different kinds of violations, up to and including revocation of release and detention.

(2) If a person who has been released pursuant to § 23-1321(c)(1)(B)(xi) violates a standard of conduct for which the sanction is revocation of release, the Department of Corrections may take the person into its custody or, if necessary, apply for a warrant for the person's arrest.

(3) The Department of Corrections shall immediately notify the Superior Court of the District of Columbia ("the Court") of the detention of the person and request an order for the person to be brought before the Court without unnecessary delay. An affidavit stating the basis for the person's remand to the jail shall be filed forthwith with the Court.

(4) If, based on the affidavit described in paragraph (3) of this subsection, the Court finds probable cause to believe that the person violated a standard of conduct for which a sanction is revocation of release, it shall schedule a hearing for revocation of release under subsection (b) of this section and shall detain the person pending completion of the hearing.

(5) If, based on the affidavit described in paragraph (3) of this subsection, the Court does not find probable cause to believe that the person violated a standard of conduct for which the sanction is revocation of release, it shall order the release of the person with the original or modified conditions of release.

(July 29, 1970, 84 Stat. 649, Pub. L. 91-358, title II, § 210(a); July 3, 1992, D.C. Law 9-125, § 7, 39 DCR 2134; Oct. 10, 1998, D.C. Law 12-165, § 3, 45 DCR 2980; June 12, 2001, D.C. Law 13-310, § 2(d), 48 DCR 1648; Oct. 26, 2001, D.C. Law 14-42, § 24, 48; June 11, 2013, D.C. Law 19-317, §§ 283(h), 311(b), 60 DCR 2064.)

Section references. — This section is referenced in § 23-1303 and § 23-1322.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (a-1); and substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than \$1,000" in (c).

Legislative history of Law 19-317. — See note to § 23-1327.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 23-1331. Definitions.

As used in this subchapter:

(1) The term “judicial officer” means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of Title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term “offense” means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term “dangerous crime” means:

(A) Any felony offense under Chapter 45 of Title 22 (Weapons) or Unit A of Chapter 25 of Title 7 (Firearms Control);

(B) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);

(C) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances);

(D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business;

(E) Burglary or attempted burglary;

(F) Cruelty to children;

(G) Robbery or attempted robbery;

(H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse;

(I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239; § 22-1831 et seq.] or any conspiracy to commit such an offense; or

(J) Fleeing from an officer in a motor vehicle (felony).

(4) The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses.

(5) The term “addict” means any individual who habitually uses any narcotic drug as defined by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(6) The term “physical injury” means bodily harm greater than transient pain or minor temporary marks.

(July 29, 1970, 84 Stat. 650, Pub. L. 91-358, title II, § 210(a); July 28, 1989, D.C. Law 8-19, § 2(c), 36 DCR 2844; May 8, 1990, D.C. Law 8-120, § 2(c), 37

DCR 24; May 8, 1993, D.C. Law 9-270, § 3, 39 DCR 9223; Oct. 2, 1993, D.C. Law 10-26, § 3, 40 DCR 3416; Aug. 20, 1994, D.C. Law 10-151, § 101(e), 41 DCR 2608; May 23, 1995, D.C. Law 10-257, § 401(f), 42 DCR 53; June 3, 1997, D.C. Law 11-273, § 3(a), 43 DCR 6168; June 12, 2001, D.C. Law 13-310, § 2(e), 48 DCR 1648; Oct. 17, 2002, D.C. Law 14-194, § 156(b), 49 DCR 5306; Apr. 24, 2007, D.C. Law 16-306, § 224(c), 53 DCR 8610; May 5, 2007, D.C. Law 16-308, § 3(b), 54 DCR 942; Oct. 23, 2010, D.C. Law 18-239, § 206(b), 57 DCR 5405; Sept. 29, 2012, D.C. Law 19-170, § 4, 59 DCR 5691; June 19, 2013, D.C. Law 19-320, § 107(a), 60 DCR 3390.)

Section references. — This section is referenced in § 5-116.01, § 5-132.21, § 7-1301.03, § 7-2501.01, § 16-2310, § 16-2310.01, § 16-2331, § 16-2332, § 16-2333, § 16-4205, § 22-951, § 22-1803, § 22-1805a, § 22-2107, § 22-3215, § 22-3611, § 22-4131, § 22-4501, § 22-4503, § 23-1322, § 23-1323, § 23-1329, § 24-211.07, § 24-403.01, § 24-531.05, § 24-531.08, § 24-531.09, and § 48-1002.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320

added (3)(J) and made related changes; and in (4), inserted “assault with significant bodily injury” preceding “assault with intent to commit any other offense” and substituted “an attempt, solicitation, or conspiracy” for “an attempt or conspiracy”.

Legislative history of Law 19-320. — See note to § 23-1322.

CHAPTER 19. CRIME VICTIMS' RIGHTS.

Sec.

23-1905. Definitions.

§ 23-1905. Definitions.

For purposes of this section,

(1) The term “community” means a formal or informal association or group of people living, working, or attending school in the same place or neighborhood and sharing common interests arising from social, business, religious, governmental, scholastic, or recreational associations.

(1A) The term “community impact statement” means a written statement that provides information about the social, financial, emotional, and physical effects of the defendant or crime on the community.

(1B) The term “court” means the Superior Court of the District of Columbia.

(2)(A) The term “victim” or “crime victim” means a person who or entity which has suffered direct physical, emotional, or pecuniary harm:

(i) As a result of the commission of any felony or misdemeanor in violation of any criminal statute in the District of Columbia;

(ii) While assisting lawfully to apprehend a person reasonably suspected of having committed or attempted a crime;

(iii) While assisting a person against whom a crime has been committed or attempted if the assistance was rendered in a reasonable manner; or

(iv) While attempting to prevent the commission of a crime.

(B) In the case of a victim or crime victim:

(i) That is an institutional entity, the term “victim” or “crime victim” includes an authorized representative of the entity.

(ii) Who is under 18 years of age, incompetent, incapacitated, or deceased, the term “victim” or “crime victim” includes a representative appointed by the court to exercise the rights and receive the services set forth in this chapter on behalf of the victim.

(C) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime:

(June 8, 2001, D.C. Law 13-301, § 302(b), 47 DCR 7039; Nov. 6, 2010, D.C. Law 18-259, § 2(b), 57 DCR 5591; June 19, 2013, D.C. Law 19-320, § 107(b), 60 DCR 3390.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 deleted “violent” preceding “misdemeanor” in (2)(A)(i).

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council

and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

TITLE 24. PRISONERS AND THEIR TREATMENT.

Chapter

2. Prisons and Prisoners.

4. Indeterminate Sentences and Paroles.

13. Ex-Offenders.

CHAPTER 1. TRANSFER OF PRISON SYSTEM TO FEDERAL AUTHORITY.

Subchapter I. Corrections.

§ 24-101. Bureau of Prisons.

Section references. — This section is referenced in § 24-102.

CASE NOTES

Applied in *Gorbey v. United States*, 54 A.3d 668, 2012 D.C. App. LEXIS 477 (2012).

CHAPTER 2. PRISONS AND PRISONERS.

Subchapter II. Department of Corrections

Part B

Department of Corrections Employee
Mandatory Drug and Alcohol Testing

Sec.

24-211.23. Testing methodology.

Subchapter II. Department of Corrections.

PART B.

DEPARTMENT OF CORRECTIONS EMPLOYEE MANDATORY DRUG
AND ALCOHOL TESTING.

§ 24-211.23. Testing methodology.

(a) Testing shall be performed by an outside contractor. The contractor shall be a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job related drug and alcohol forensic testing.

(b) For random testing, the contractor shall come on-site to the Department's institutions and shall collect urine specimens and split the samples. The contractor shall perform enzyme-multiplied-immunoassay technique ("EMIT") testing on one sample and store the split sample. Any positive EMIT test shall then be confirmed by the contractor using gas chromatography/mass spectrometry ("GCMS") methodology.

(c) Any Department employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS certified laboratory of his or her choice, at his or her expense, for secondary GCMS confirmation.

(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyzer.

(e) Any Department employee who operates a motor vehicle in the District of Columbia shall be deemed to have given his or her consent, subject to conditions in this subchapter, to the testing of the person's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has reasonable suspicion or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person was operating or in physical control of a motor vehicle within the District while that person was intoxicated as defined by § 50-2206.01(9), while under the influence of an intoxicating liquor or any drug or any combination thereof, or while the ability to operate a motor vehicle was impaired by the consumption of an intoxicating beverage.

(f) A breathalyzer shall be deemed positive by the Department's testing contractor if the contractor determines that the alcohol concentration of the employee's breath meets the definition of intoxicated as defined by § 50-2206.01(9). A positive breathalyzer test shall be grounds for termination of employment in accordance with subchapter I of Chapter 6 of Title 1.

(Sept. 20, 1996, D.C. Law 11-158, § 4, 43 DCR 3702; Apr. 13, 1999, D.C. Law 12-227, § 3, 46 DCR 502; Mar. 2, 2007, D.C. Law 16-195, § 5, 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 305, 59 DCR 12957.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "person was intoxicated as defined by § 50-2206.01(9)" for "person's alcohol concentration was 0.08 grams or more per 210 liters of breath" in (e); and substituted "the alcohol concentration of the employee's breath meets the definition of intoxicated as defined by § 50-2206.01(9)" for "210 liters of the employee's breath contains 0.08 grams or more of alcohol" in (f).

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

CHAPTER 4. INDETERMINATE SENTENCES AND PAROLES.

Subchapter I. General Provisions

Subchapter III. Medical and Geriatric Parole

Sec.

Sec.

24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

24-467. Exceptions.

24-468. Medical and geriatric suspension of sentence.

Subchapter I. General Provisions.

§ 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

(a) For any felony committed on or after August 5, 2000, the court shall impose a sentence that:

(1) Reflects the seriousness of the offense and the criminal history of the offender;

(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

(b)(1) If an offender is sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section, the court shall impose a period of supervision ("supervised release") to follow release from the imprisonment or commitment.

(2) If the court imposes a sentence of more than one year, the court shall impose a term of supervised release of:

(A) Five years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Three years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(3) If the court imposes a sentence of one year or less, the court shall impose a term of supervised release of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is 25 years or more; or

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is more than one year, but less than 25 years.

(4) In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of:

(A) Not more than 10 years; or

(B) Not more than life if the person is required to register for life.

(5) The term of supervised release commences on the day the offender is released from imprisonment, and runs concurrently with any federal, state, or local term of probation, parole, or supervised release for another offense to which the offender is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the offender is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is less than 30 days.

(6) Offenders on supervised release shall be subject to the authority of the United States Parole Commission until completion of the term of supervised release. The Parole Commission shall have and exercise the same authority as is vested in the United States District Courts by 18 U.S.C. § 3583(d)-(i), except that:

(A) The procedures followed by the Parole Commission in exercising such authority shall be those set forth in chapter 311 [repealed] of title 18 of the United States Code; and

(B) An extension of a term of supervised release under 18 U.S.C. § 3583(e)(2) may be ordered only by the court upon motion from the Parole Commission.

(7) An offender whose term of supervised release is revoked may be imprisoned for a period of:

(A) Not more than 5 years, if the maximum term of imprisonment authorized for the offense is life or the offense is specifically designated as a Class A felony;

(B) Not more than 3 years, if the maximum term of imprisonment authorized for the offense is 25 years or more, but less than life and the offense is not specifically designated as a Class A felony;

(C) Not more than 2 years, if the maximum term of imprisonment authorized for the offense is 5 years or more, but less than 25 years; or

(D) Not more than 1 year, if the maximum term of imprisonment authorized for the offense is less than 5 years.

(b-1) If the maximum term of imprisonment authorized for an offense is a term of years, the term of imprisonment or commitment imposed by the court

shall not exceed the maximum term of imprisonment authorized for the offense less the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) of this section. If the maximum term of imprisonment authorized for the offense is up to life or if an offense is specifically designated as a Class A felony, the maximum term of imprisonment authorized upon revocation of supervised release pursuant to subsection (b)(7) shall not be deducted from the maximum term of imprisonment or commitment authorized for such offense.

(b-2)(1) The court may impose a sentence in excess of 60 years for first degree murder or first degree murder while armed, 40 years for second degree murder or second degree murder while armed, or 30 years for armed carjacking, first degree sexual abuse, first degree sexual abuse while armed, first degree child sexual abuse or first degree child sexual abuse while armed, only if:

(A) Thirty-days prior to trial or the entry of a plea of guilty, the prosecutor files an indictment or information with the clerk of the court and a copy of such indictment or information is served on the person or counsel for the person, stating in writing one or more aggravating circumstances to be relied upon; and

(B) One or more aggravating circumstances exist beyond a reasonable doubt.

(2) Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include:

(A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));

(B) The offense was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding or was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;

(C) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(D) The offense was especially heinous, atrocious, or cruel;

(E) The offense involved a drive-by or random shooting;

(F) The offense was committed after substantial planning;

(G) The victim was less than 12 years old or more than 60 years old or vulnerable because of mental or physical infirmity; or

(H) Except where death or serious bodily injury is an element of the offense, the victim sustained serious bodily injury as a result of the offense.

(3) This section does not limit the imposition of a maximum sentence of up to life imprisonment without possibility of release authorized by § 22-1804a; § 22-2104.01; § 22-2106; and § 22-3020.

(c) A sentence under this section of imprisonment, or of commitment pursuant to § 24-903, shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by

law. A person sentenced under this section to imprisonment, or to commitment pursuant to § 24-903, for such a felony shall serve the term of imprisonment or commitment specified in the sentence, less any time credited toward service of the sentence under subsection (d) of this section.

(d) A person sentenced to imprisonment, or to commitment pursuant to § 24-903, under this section may receive good time credit toward service of the sentence only as provided in 18 U.S.C. § 3624(b).

(d-1)(1) A person sentenced to imprisonment under this section for a nonviolent offense may receive up to a one-year reduction in the term the person must otherwise serve if the person successfully completes a substance abuse treatment program in accordance with 18 U.S.C. § 3621(e)(2).

(2) For the purposes of this subsection, the term “nonviolent offense” means any crime other than those included within the definition of “crime of violence” in § 23-1331(4).

(e) The sentence imposed under this section on a person convicted of assault with intent to commit first or second degree sexual abuse or child sexual abuse in violation of § 22-401, or of armed robbery in violation of § 22-4502, shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the control of dangerous weapons in the District of Columbia. The sentence imposed under this section on a person convicted of first or second degree sexual abuse or child sexual abuse in violation of § 22-3002, § 22-3003, or § 22-3008 through § 22-3010, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as so defined.

(f) The sentence imposed under this section shall not be less than 1 year for a person convicted of:

(1) Assault with a dangerous weapon on a police officer in violation of § 22-405, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction;

(2) Illegal possession of a pistol [now “firearm”] in violation of § 22-4503, occurring after the person has been convicted of violating that section; or

(3) Possession of the implements of a crime in violation of § 22-2501, occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction.

(g) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(July 15, 1932, 47 Stat. 697, ch. 492, § 3a, as added Oct. 10, 1998, D.C. Law 12-165, § 2, 45 DCR 2980; June 8, 2001, D.C. Law 13-302, § 8(a), 47 DCR 7249; June 19, 2001, D.C. Law 13-313, § 21(c) 48 DCR 1873; May 24, 2005, D.C. Law 15-357, § 302, 52 DCR 1999; June 25, 2008, D.C. Law 17-177, § 14, 55 DCR 3696; June 11, 2013, D.C. Law 19-317, § 312, 60 DCR 2064.)

Section references. — This section is referenced in § 22-722, § 22-1804a, § 22-2001, § 22-2101, § 22-2102, § 22-2103, § 22-2104, § 22-2803, § 22-3002, § 22-3008, § 22-4502,

and § 22-4515a.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (g).

Legislative history of Law 19-317. — See note to § 22-3571.01.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Medical and Geriatric Parole.

§ 24-467. Exceptions.

Persons convicted of first degree murder or persons sentenced for crimes committed when armed under § 22-4502, or under § 22-4504(b), or under § 22-2803, shall not be eligible for geriatric parole or geriatric suspension of sentence.

(May 15, 1993, D.C. Law 9-271, § 8, 40 DCR 792; Feb. 5, 1994, D.C. Law 10-68, § 57, 40 DCR 6311; May 16, 1995, D.C. Law 10-255, § 18, 41 DCR 5193; May 25, 1995, D.C. Law 10-258, § 2, 42 DCR 238; June 15, 2013, D.C. Law 19-318, § 2(a), 59 DCR 12469.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-318 substituted “or under § 22-2803” for “and § 22-2803”; and substituted “eligible for geriatric parole or geriatric suspension of sentence” for “eligible for geriatric or medical parole.”

Legislative history of Law 19-318. — Law 19-318, the “Compassionate Release Authorization Amendment Act of 2012,” was introduced

in Council and assigned Bill No. 19-525. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 10, 2012, it was assigned Act No. 19-479 and transmitted to Congress for its review on Nov. 1, 2012, and re-transmitted on March 5, 2013. D.C. Law 19-318 became effective on June 15, 2013.

§ 24-468. Medical and geriatric suspension of sentence.

(a)(1) Upon a motion by the Director of the Federal Bureau of Prisons, the court may suspend execution of the sentence of any person convicted under the District of Columbia Official Code of a felony or of a felony and a misdemeanor committed on or after August 5, 2000, and sentenced to a determinate term of imprisonment which is not subject to parole and, notwithstanding § 16-710(b), shall impose a period of probation to follow release equal to the period of incarceration that was suspended. A copy of the motion shall be served on the prosecutor and counsel for the inmate.

(2) Upon a motion by the Director of the Department of Corrections, the court may suspend execution of the sentence of any person convicted under the District of Columbia Official Code of a felony committed on or after August 5, 2000, who has not commenced serving that sentence at the Bureau of Prisons or a Bureau of Prisons' contract facility, including the Department of Corrections, or of any person convicted under the District of Columbia Official Code of a misdemeanor committed on or after August 5, 2000, and, notwithstanding § 16-710(b), shall impose a period of probation to follow release equal to the period of incarceration that was suspended. A copy of the motion shall be served on the prosecutor and counsel for the inmate. This paragraph shall not apply to any person who is physically present in a Department of Corrections

facility pursuant to a writ of habeas corpus, at the request of a prosecutor or defense attorney, or because of a parole or supervised release detainer.

(b)(1) The court may suspend execution of a sentence pursuant to subsection (a)(1) or (a)(2) of this section only if, after giving the prosecutor and counsel for the inmate notice and an opportunity to be heard, the court finds that:

(A) The inmate is permanently incapacitated or terminally ill because of a medical condition that was not known to the court at the time of sentencing, and the release of the inmate under supervision is not incompatible with public safety; or

(B) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging, and the release of the inmate under supervision is not incompatible with public safety.

(2) The court shall act expeditiously on any motion submitted by the Director of the Bureau of Prisons or the Director of the Department of Corrections. If the court receives a request directly from an inmate or a representative of an inmate, the court may refer the matter to the Federal Bureau of Prisons or the Department of Corrections, as the case may be, for a motion or a statement of reasons as to why a motion will not be filed.

(May 15, 1993, D.C. Law 9-271, § 8a, as added Oct. 10, 1998, D.C. Law 12-165, § 5, 45 DCR 2980; June 15, 2013, D.C. Law 19-318, § 2(b), 59 DCR 12469.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-318 rewrote the section.

Legislative history of Law 19-318. — See note to § 24-467.

§ 24-531.01. Definitions.

Section references. — This section is referenced in § 16-2307.

CASE NOTES

Competence.

Court properly found codefendant competent to stand trial based on an evaluation at a hospital, corroboration by codefendant's satisfactory behavior at trial, his responses to an inquiry, and a doctor's post-trial report and assessment; counsel's report of communication problems, by itself, did not suffice to raise a

substantial doubt about his competence to stand trial, where the evidence showed defendant improved and was competent by the time of trial. *Hargraves v. United States*, 59 A.3d 934, 2013 D.C. App. LEXIS 13 (2013), vacated by 62 A.3d 107, 2013 D.C. App. LEXIS 68 (D.C. 2013), superseded by 62 A.3d 107, 2013 D.C. App. LEXIS 69 (D.C. 2013).

§ 24-531.04. Initial competence determination.

Section references. — This section is referenced in § 24-531.03, § 24-531.05, and § 24-531.08.

CASE NOTES

Defendant found to be competent.

Court properly found codefendant competent to stand trial based on an evaluation at a

hospital, corroboration by codefendant's satisfactory behavior at trial, his responses to an inquiry, and a doctor's post-trial report and

assessment; counsel's report of communication problems, by itself, did not suffice to raise a substantial doubt about his competence to stand trial, where the evidence showed defendant improved and was competent by the time

of trial. *Hargraves v. United States*, 59 A.3d 934, 2013 D.C. App. LEXIS 13 (2013), vacated by 62 A.3d 107, 2013 D.C. App. LEXIS 68 (D.C. 2013), superseded by 62 A.3d 107, 2013 D.C. App. LEXIS 69 (D.C. 2013).

§ 24-801. Enactment.

CASE NOTES

ANALYSIS

Dismissal of charges.
Time limitations.

Dismissal of charges.

After a dismissal with prejudice pursuant to the Interstate Agreement on Detainers (IAD) in the Superior Court of the District of Columbia, the same charges arising out of the same course of events may not be recharged by either prosecuting authority. Thus, after the United States Attorney's Office for the District of Columbia dismissed District of Columbia Code charges against defendant with prejudice pursuant to

the IAD, the same charges arising out of the same course of events could not be recharged by the Office of Attorney General for the District of Columbia. *Washington v. District of Columbia*, 56 A.3d 1155, 2012 D.C. App. LEXIS 504 (2012).

Time limitations.

Time limitations set forth in the Interstate Agreement on Detainers apply to all District of Columbia Code charges on the basis of which a detainer has been lodged, regardless of which prosecuting authority ultimately brings those charges to trial. *Washington v. District of Columbia*, 56 A.3d 1155, 2012 D.C. App. LEXIS 504 (2012).

CHAPTER 13. EX-OFFENDERS.

Subchapter 1. General

Sec.

24-1304. Issuance of certificate of good standing.

Subchapter II. Limited Liability for Employers Regarding Criminal History of Employees

24-1351. Limited liability.

Subchapter 1. General.

§ 24-1301. Definitions.

Editor's notes.

Because of the codification of D.C. Law 19-319 as subchapter II of this chapter, the preex-

isting text, consisting of §§ 24-1301 through 24-1304, was designated as subchapter I.

§ 24-1304. Issuance of certificate of good standing.

(a) The Mayor is authorized to establish a program for the issuance of a certificate of good standing to any person previously convicted of a crime in the District of Columbia.

(b) A certificate of good standing shall include the following:

(1) Its date of issuance.

(2) The date the individual's last sentence, including parole, probation, or supervised release, was completed.

(3) Any outstanding and pending charges against the individual as of the date that the certificate of good standing is issued.

(4) Any outstanding and pending writs and holds placed on the individual as of the date that the certificate of good standing is issued.

(5) A statement that the information on the certificate of good standing reflects only the records, as of the date of issuance, in the database of the Department of Corrections and all other databases to which the department has access, and that the certificate is only a statement of the individual's status and shall not be construed as a statement of the individual's character.

(c) An individual may petition the Mayor for a certificate of good standing at any time after his or her completion of any and all sentences, including parole, probation, or supervised release.

(d) The District of Columbia shall not be liable for the actions of an individual to whom a certificate of good standing has been issued.

(e) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement this section.

(Mar. 8, 2007, D.C. Law 16-243, § 4a, as added June 15, 2013, D.C. Law 19-319, § 6, 60 DCR 2333.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-319 added this section.

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted

on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

Subchapter II. Limited Liability for Employers Regarding Criminal History of Employees.

§ 24-1351. Limited liability.

Information regarding a criminal history record of an employee or a former employee shall not be introduced as evidence in a civil action against an employer or its employees or agents if that information is based on the conduct of the employee or former employee, and if the employer has made a reasonable, good-faith determination that the following factors favored the hiring or retention of that applicant or employee:

(1) The specific duties and responsibilities of the position being sought or held;

(2) The bearing, if any, that an applicant's or employee's criminal background will have on the applicant's or employee's fitness or ability to perform one or more of the duties or responsibilities related to his or her employment;

(3) The time that has elapsed since the occurrence of the criminal offense;

(4) The age of the person at the time of the occurrence of the criminal offense;

(5) The frequency and seriousness of the criminal offense;

(6) Any information produced regarding the applicant's or employee's rehabilitation and good conduct since the occurrence of the criminal offense; and

(7) The public policy that it is generally beneficial for persons with criminal records to obtain employment.

(June 15, 2013, D.C. Law 19-319, § 2, 60 DCR 2333.)

Legislative history of Law 19-319. — Law 19-319, the “Re-entry Facilitation Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and

Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

DIVISION V. LOCAL BUSINESS AFFAIRS.

TITLE 25. ALCOHOLIC BEVERAGES.

Chapter

1. General Provisions and Classification of Licenses.
2. Alcoholic Beverage Regulation Administration.
3. Requirements To Qualify For License.
4. Application and Review Processes.
5. Annual Fees.
6. Protests, Referendum, and Complaints.
7. Standards of Operation.
8. Enforcement, Infractions, and Penalties.
10. Limitations on Consumers.

CHAPTER 1. GENERAL PROVISIONS AND CLASSIFICATION OF LICENSES.

Subchapter I. General Provisions

Sec.

25-101. Definitions.

Subchapter II. Classification of Licenses and Permits

25-112. Off-premises retailer's licenses.

25-113. On-premises retailer's licenses.

Sec.

25-115. Temporary license requirements and qualifications.

25-117. Brew pub permit requirements and qualifications.

25-124. Wine pub permit requirements and qualifications.

Subchapter I. General Provisions.

§ 25-101. Definitions.

For the purposes of this title, the term:

(1) "ABRA" means the Alcoholic Beverage Regulation Administration established by § 25-202.

(2) "ABRA Fund" means the Alcoholic Beverage Regulation Administration Fund established by § 25-210.

(3) "Adult" means a person who is 21 years of age or older.

(4) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, from whatever source or by whatever processes produced.

(5) "Alcoholic beverage" means a liquid or solid, patented or not, containing alcohol capable of being consumed by a human being. The term "alcoholic beverage" shall not include a liquid or solid containing less than one-half of 1% of alcohol by volume.

(6) "Applicant" means, as the context requires, the individual applicant, each member of an applicant partnership or limited liability company, or each of the principal officers, directors, and shareholders of an applicant corporation, or, if other than an individual, the applicant entity.

(7) "ANC" means an Advisory Neighborhood Commission as authorized under D.C. Official Code § 1-207.38.

(8) “Back-up drink” means a drink, including a single drink consisting of more than one alcoholic beverage, that is served to a customer before the customer has consumed a previously served drink.

(9) “Bartender” means a person who fixes, mixes, makes, or concocts an alcoholic beverage for consumption.

(10) “Beer” means a fermented beverage of any name or description manufactured from malt, wholly or in part, or from any substitute for malt.

(11) “Board” means the Alcoholic Beverage Control Board established by § 25-201.

(12) “Brew pub” means an establishment for the manufacture of beer to be sold for consumption only at the place of manufacture and for sale to licensed wholesalers for the purpose of resale to other licensees.

(13) “Business days” means Monday, Tuesday, Wednesday, Thursday, and Friday, excluding holidays.

(14) “Caterer” means a corporation, partnership, individual, or limited liability company that prepares, sells, delivers, and serves food and beverages to its customers, under an agreement in advance of delivery, for a catered event on the premises designated by the customer for the duration of the catered event.

(15) “Club” means a corporation, duly organized and in good standing under Chapters 1 and 4 of Title 29, owning, leasing, or occupying a building, or a portion thereof, at which the sale of alcoholic beverages is incidental to, and not the prime source of revenue from, the operation of the building or the portion thereof. The term “club” shall not include a college fraternity or sorority.

(15A) “Cooperative agreement” shall have the same meaning, and is synonymous with, settlement agreement.

(16) “Credit card” means a consumer credit card extended on a nationally recognized account pursuant to a plan under which:

(A) The creditor may permit the customer to make purchases or obtain loans by the use of a credit card, check, or other device as the plan may provide;

(B) The customer has the privilege of paying the balance in full or in installments; and

(C) A finance charge may be computed by the creditor from time to time on an outstanding unpaid balance.

(17) “CSA” means Chapter 9 of Title 48.

(18) “DC Arena” means the multi-purpose arena for the performance of sports and entertainment events and related amenities described in recital “E” of the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia, and DC Arena L.P., dated December 29, 1995.

(19) “Director” means the Director of the Alcoholic Beverage Regulation Administration appointed under § 25-207.

(20) “District” means the District of Columbia.

(21) “Establishment” means a business entity operating at a specific location.

(21A) “Entertainment” means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry read-

ings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

(21B) "Farm winery" means a winery where at least 51% of the fresh fruits or agricultural products used by the owner or lessee to manufacture the wine shall be grown or produced on such farm.

(22) "Food" means any substance consumed by human beings except alcoholic beverages and any nonalcoholic liquid or solid substance served as part of the contents of an alcoholic beverage drink.

(23) "Go-cup" means a drinking utensil provided at no charge or a nominal charge to a customer for the purpose of consuming alcoholic beverages off the premises of an establishment.

(24) "Gross annual receipts" means the total amount of money received during the most recent one-year accounting period for the sale of food and alcoholic beverages, not including the amount received for taxes and gratuities in conjunction with sales or charges for entertainment or other services. Gross annual receipts are subject to audit and examination under § 25-802.

(24A) "Gross annual food sales" means the total amount of food sold during the most recent one-year accounting period. Gross annual food sales are subject to audit and examination under § 25-802.

(24B) "Growler" means a reusable container that is capable of holding up to 64 fluid ounces of beer and is designed to be filled and sealed on premises for consumption off premises.

(25) "Hotel" means an establishment where food and lodging are regularly furnished to transients and which has at least 30 guest rooms and a dining room in the same or connecting buildings.

(26) "Interest" includes the ownership or other share of the operation, management, or profits of a licensed establishment. The term "interest" shall not include an agreement for the lease of real property.

(27) "Keg" means a container which is capable of holding 4 gallons or more of beer, wine, or spirits and which is designed to dispense beer, wine, or spirits directly from the container.

(28) "Land Disposition Lease" means the Land Disposition Agreement-Ground Lease By and Among the District of Columbia Redevelopment Land Agency, the District of Columbia, and DC Arena L.P., dated December 29, 1995.

(29) "Legal drinking age" means 21 years of age.

(30) "Legitimate theater" means premises in which the principal business shall be the operation of live theatrical, operatic, or dance performances, or such other lawful adult entertainment or recreational facilities as the Board, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this title, shall, by regulation, classify as legitimate theater. The term "legitimate theater" shall not mean a motion picture theater.

(31) "Locality" means the neighborhood within 600 feet of an establishment.

(32) "Manufacture" includes any purification or repeat distillation processes or rectification.

(32A) "Miniature" means an alcoholic beverage in a sealed container holding 50 milliliters or less.

(33) "Nightclub" means a space in a building, and the adjoining space outside of the building, regularly used and kept open as a place that serves food and alcoholic beverages and provides music and facilities for dancing.

(34) "Nude performance" means dancing or other entertainment by a person whose genitals, pubic region, or anus are less than completely and opaquely covered and, in the case of a female, whose breasts are less than completely and opaquely covered below a point immediately above the top of the areola.

(35) "Open container" means a bottle, can, or other container that is open or from which the top, cap, cork, seal, or tab seal has at some time been removed.

(35A) "Overconcentration" means the existence of several licensed establishments that adversely affect a specific locality, section, or portion of the District of Columbia, including consideration of the appropriateness standards under § 25-313(b).

(36) "Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

(37) "Person" includes an individual, partnership, corporation, limited liability company, and an unincorporated association.

(37A) "Pool buying agent" means the licensed vendor who is registered by the pool buying group with the Alcoholic Beverage Regulation Administration.

(37B) "Pool buying group" means a group of 2 or more licensees under an on-premises restaurant license (R), as defined in § 25-113(b), who have been approved by the Alcoholic Beverage Regulation Administration to consolidate orders for alcoholic beverages ordered through a licensed pool buying agent from any lawful source in a single order.

(38) "Portion" means the neighborhood within 1800 feet of an establishment.

(39) "Protest" means a written statement in opposition to the issuance of a license.

(40) "Protest hearing" means the adjudicatory proceeding held by the Board, after receipt of a protest, to hear persons objecting to, or in support of, the issuance of a license.

(41) "Protest period" means a 45-day period during which an objection to the issuance or renewal, substantial change in operation under § 25-404, or transfer to new location, may be filed.

(42) "Residential districts" means those districts identified as residential by the zoning regulations and the official atlases of the Zoning Commission for the District of Columbia.

(43) Restaurant means a space in a building which shall:

(A)(i) Be regularly ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food;

(ii) Be held out to and known by the public as primarily a food-service establishment;

(iii) Have all advertising and signs emphasize food rather than alcoholic beverages or entertainment;

(iv) Be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements);

(v) Have its kitchen facilities open until at least 2 hours before closing;

(vi) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or offering facilities for dancing;

(vii) If possessing an entertainment endorsement, be permitted to charge a cover and advertise entertainment, but shall not primarily advertise drink specials;

(viii) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

(ix) Not have nude performances; and

(x) Have annual gross food sales of \$1500 or \$2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy), depending on license class; or

(B)(i) Have adequate kitchen and dining facilities;

(ii) Keep its kitchen facilities open until 2 hours before closing;

(iii) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or having facilities for dancing;

(iv) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

(v) Not have nude performances; and

(vi) Have the sale of food account for at least 45% of the establishment's gross annual receipts.

(C) Any licensee operating under a C/R, Do/R, C/H, or D/H license who is not in compliance with the food sales requirements of this paragraph as of [September 30, 2004], shall be permitted to maintain its current license and operations for a period of 2 years from [September 30, 2004]; provided, that there is no substantial change in operations during that period without a substantial change application.

(44) "RLA" means the District of Columbia Redevelopment Land Agency.

(45) "Sale" or "sell" includes offering for sale, keeping for sale, manufacturing for sale, soliciting orders for sale, trafficking in, importing, exporting, bartering, delivering for value or in any way other than by purely gratuitously transferring. Every delivery of any alcoholic beverage made otherwise than purely gratuitously shall constitute a sale.

(46) "Section" means the neighborhood within 1,200 feet of an establishment.

(47) "Settlement conference" means a meeting between the applicant and the protestants held for the purpose of discussing and resolving, where possible, the objections raised by the protestants.

(48) "Sign" shall have the same meaning as defined in Chapter 31 of Title 12 of the District of Columbia Municipal Regulations.

(48A) "Southeast Federal Center" means the area as defined in section 2 of the Southeast Federal Center Public-Private Development Act of 2000,

approved November 1, 2000 (Pub. L. No. 106-407; 114 Stat. 1758), and Chapter 18 of Title 11 of the District of Columbia Municipal Regulations [CDCR 11-1800].

(49) "Spirits" means:

(A) A beverage which contains alcohol mixed with water and other substances in solution, including brandy, rum, whisky, cordials, and gin; and

(B) An alcoholic beverage containing more than 15% alcohol.

(50) "Statement" means a representation by words, design, picture, device, illustration, or other means.

(51) "Table" shall not include a counter, bar, or similar contrivance.

(52) "Tavern" means a space in a building which:

(A) Is regularly used and kept open as a place where food and alcoholic beverages are served;

(B) May offer entertainment, except nude performances, and offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement; and

(C) Does not provide facilities for dancing for its employees or entertainers.

(53) "Valid identification document" means an official identification issued by an agency of government (local, state, federal, or foreign) containing, at a minimum, the name, date of birth, signature, and photograph of the bearer.

(54) Repealed.

(55) Repealed.

(56) "Wine" means an alcoholic beverage containing not more than 15% alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

(Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 1; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Sept. 29, 1982, D.C. Law 4-157, §§ 2, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law 5-16, § 2, 30 DCR 3193; May 23, 1986, D.C. Law 6-119, § 2, 33 DCR 2447; Mar. 7, 1987, D.C. Law 6-217, § 2, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(a), 38 DCR 4974; Oct. 3, 1992, D.C. Law 9-174, § 2(a), 39 DCR 5859; Sept. 11, 1993, D.C. Law 10-12, § 2(a), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(a), 41 DCR 1658; Apr. 12, 1997, D.C. Law 11-258, § 2(a), 44 DCR 1421; Mar. 26, 1999, D.C. Law 12-202, § 2(a), 45 DCR 8412; Mar. 26, 1999, D.C. Law 12-206, § 2(a), 45 DCR 8430; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 3, 2001, D.C. Law 14-28, § 3002(a), 48 DCR 6981; Oct. 1, 2002, D.C. Law 14-190, § 1702(a), 49 DCR 6968; Sept. 30, 2004, D.C. Law 15-187, §§ 301(b), 401(b), 51 DCR 6525; Mar. 2, 2007, D.C. Law 16-191, § 47(b), 53 DCR 6794; July 18, 2008, D.C. Law 17-201, § 2(b), 55 DCR 6289; Mar. 3, 2010, D.C. Law 18-111, § 2082(n)(1), 57 DCR 181; July 2, 2011, D.C. Law 18-378, § 3(f), 58 DCR 1720; Oct. 20, 2011, D.C. Law 19-23, § 2(a), 58 DCR; May 1, 2013, D.C. Law 19-310, § 2(a), 60 DCR 3410.)

Section references. — This section is referenced in § 7-742, § 7-745, § 7-1702, § 7-1708, § 25-112, § 25-113, and § 25-723.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote (15A), (34), (49)(B), and (56); repealed (54); and added (24B), (32A), and (35A).

Legislative history of Law 19-310. — Law 19-310, the “Omnibus Alcoholic Beverage Reg-

ulation Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-824. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 11, 2013, it was assigned Act No. 19-678 and transmitted to Congress for its review. D.C. Law 19-310 became effective on May 1, 2013.

Subchapter II. Classification of Licenses and Permits.

§ 25-110. Manufacturer’s licenses.

Legislative history of Law 19-310. — See note to § 25-101.

19-310 added “and Permits” in the subchapter heading.

Editor’s notes. — Section 2(b) of D.C. Law

§ 25-112. Off-premises retailer’s licenses.

(a) An off-premises retailer’s license shall authorize the licensee to sell alcoholic beverages from the place described and to deliver the same in the barrel, keg, sealed bottle, or other closed container in which the same was received by the licensee, including the sale of growlers by the holder of an off-premise retailer licensee, class A, notwithstanding any other provision or restrictions of this title.

(a-1)(1) An off-premises retailer’s licensee, class B, that is also a full-service grocery store meeting the requirements of § 25-331(d), may also sell beer in growlers.

(2)(A) The Board shall promulgate rules within 45 days of [January 14, 2013], to provide a definition of “full-service grocery store” as used in this title.

(B) Notwithstanding subchapter III of Chapter 3 of this title, the Board shall not issue any new full-service grocery store, off-premises retailer’s class B licenses for 45 days from [January 14, 2013] or until the rulemaking required by this paragraph has been promulgated and approved by the Council, whichever date is sooner.

(C) Upon approval by the Council of the regulations promulgated by the Board pursuant to this paragraph, the Council shall incorporate the definition of “full-service grocery store” into § 25-101.

(b) The barrel, keg, sealed bottle, or other closed container shall not be opened, except for the sale of growlers, or the contents consumed, at the licensed establishment.

(c) The license shall not authorize the licensee to sell to other licensees for resale; provided, that the licensee under an off-premises retailer’s license, class A, may sell to:

(1) Caterers licensed under § 25-113(i);

(2) [Expired];

(2A) Licensees under a temporary license or an on-premises retailer’s license, class C or D, if the alcoholic beverages were purchased by the off-premises retailer from a licensee under a wholesaler license or brought into

the District under a validly issued import permit; provided, that the sales to an on-premises retailer's class C and D license, may be made only on a Saturday, Sunday, or holiday during the hours when licensees under a wholesaler's license are closed; provided further, that an on-premises retailer's licensee shall maintain on the licensed premises for 3 years either a receipt or invoice containing:

(A) The date of the purchase;

(B) The quantity and brand name of the alcoholic beverages purchased;

and

(C) The name of the on-premises licensee to which the sale was made;

and

(3) If the licensee that is a member of a pool buying group, to other members of the same pool buying group any alcoholic beverages if:

(A) A pool member other than the buying agent transfers to another pool member any portion of the alcoholic beverages ordered by the transferee retailer as part of the single transaction pool purchase;

(B) A transfer pursuant to this section is made within 7 days of the pool delivery without any cost or charge whatsoever being made against the transferee retailer;

(C) The acquisition of alcoholic beverage products is recorded in an invoice maintained by both participating retailers for 3 years and includes:

(i) Business name, address, and license number of each licensee;

(ii) Names, sizes, and quantities of the products transferred;

(iii) Date that the delivery of products was received;

(iv) Date that the physical transfer of products was made;

(v) Unique identifier that links the record with a specific pool order;

and

(vi) The resale certificate number of the licensee acquiring the products for resale.

(d) There shall be 2 classes of off-premises retailer's licenses:

(1) A retailer's license, class A, shall authorize the licensee to sell spirits, beer, and wine.

(2) A retailer's license, class B, shall authorize the licensee to sell beer and wine.

(e) The licensee under an off-premises retailer's license, class B, who qualifies for the license as a result of the application of § 25-303(c), § 25-331(d), § 25-332(c), or § 25-333(c), shall:

(1) File with the Board, within 60 days after the end of each year, a statement of expenditures and receipts by the licensed establishment containing the following:

(A) The total amount of receipts for the sale of alcoholic beverages, indicating the amount received for the sale of alcoholic beverages, the amount received for the sale of food, and the percentage of the total amount of receipts represented by each amount;

(B) A statement indicating the method used to compute the amounts and percentages; and

(C) An affidavit, executed by the individual licensee, partner of an applicant partnership, or the appropriate officer of an applicant corporation or limited liability company, attesting to the truth of the annual statement.

(2) The annual accounting period, for the purposes of the annual report, shall correspond to each of the 3 years for which a license is issued.

(3) The making of a false statement on an annual statement shall constitute grounds on which the Board may deny the renewal of a license, or subsequently revoke the license, if the renewal of the license is based in whole or in part on the contents of the false statement.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(b), 401(d), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(c), 60 DCR 3410.)

Section references. — This section is referenced in § 2-1212.01, § 8-102.01, and § 25-332.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added “including the sale of growlers by the holder of an off-premise retailer licensee, class

A, notwithstanding any other provision or restrictions of this title” in (a); added (a-1); added “except for the sale of growlers” in (b); and added (c)(2A) and made a related change.

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-113. On-premises retailer’s licenses.

(a)(1) On-premises retailer’s licenses shall be classified by the type of establishment licensed, as follows: restaurant, tavern, nightclub, hotel, club, multipurpose facility, and common carrier.

(2) For each type of establishment listed in paragraph (1) of this section, there shall be 2 classes of on-premises retailer’s license:

(A)(i) Except as otherwise provided, an on-premises retailer’s license, class C, shall authorize the licensee to sell spirits, wine, and beer at the licensed establishment for consumption only at the licensed establishment.

(ii) It shall be a secondary tier violation for an on-premises retailer’s class C or D licensee, to knowingly allow a patron to exit the licensed establishment with an alcoholic beverage in an open container.

(B) Except as otherwise provided, an on-premises retailer's license, class D, shall authorize the licensee to sell wine and beer at the licensed establishment for consumption only at the licensed establishment.

(3) The licensee of any kind of on-premises retailer's licenses, class C or D, shall not sell or serve alcoholic beverages in any closed container; provided that:

(A) A hotel may sell and serve alcoholic beverages in closed containers in the private rooms of registered guests; and

(B) A club may sell and serve alcoholic beverages in closed containers in any room or area available only to members of the club or their guests.

(4)(A) Except as provided in subparagraph (B) of this paragraph, nothing in the license classifications in this section shall be construed as prohibiting or restricting a restaurant from offering entertainment or facilities for dancing, preventing or restricting a tavern from offering entertainment, or preventing or restricting a nightclub from offering food. A licensee who offers food, entertainment, or facilities for dancing may advertise the food, entertainment, or facilities for dancing that are offered, regardless of the kind of license held.

(B) No licensed establishment other than a nightclub or a legitimate theater may provide entertainment by nude performers.

(b)(1) A restaurant license (R) shall be issued only for a restaurant. It shall be a secondary tier violation for a restaurant to not keep its kitchen facilities open until 2 hours before closing.

(2)(A) The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

(B) The Board shall make a licensee's quarterly statements available for the purpose of allowing a protestant of a license to determine the gross annual receipts of a licensee.

(3)(A) There shall be 2 classes of restaurant licenses:

(i) Class C/R (spirits, wine, and beer); and

(ii) Class D/R (wine and beer).

(B)(i) A class C/R license may be issued to:

(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least \$2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

(ii) A class D/R license may be issued to:

(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least \$1500 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

(iii) The Board shall, by rule, adjust for inflation the gross annual food sales per occupant requirements established under subparagraphs

(B)(i)(I) and (B)(ii)(I) of this paragraph once every 5 years. The first adjustment shall be effective January 1, 2010. In determining the appropriate inflation index to be applied, the Board may consider the inflation indices customarily employed by the federal and District governments for similar purposes.

(4) The Board, in its sound discretion, may require that a restaurant (R) licensee file a security plan with the Board. A restaurant (R) licensee so required shall comply with the terms of its security plan.

(5)(A) Notwithstanding any other provision of this subchapter, a restaurant license (R) under this section shall authorize the licensee to permit a patron to remove one partially consumed bottle of wine for consumption off premises.

(B) A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employee before removal from the premises.

(C) The partially consumed bottle shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine shall be provided by the licensee and attached to the container.

(c)(1) A tavern license (T) shall be issued only for a tavern.

(2) The size of the dance floor in a tavern that does not possess an entertainment endorsement shall not exceed 140 square feet; provided, that the licensee whose establishment on September 30, 1986 contained a regularly used dance floor in excess of 140 square feet and who is occupying the same establishment shall not be disqualified under this limitation.

(3) There shall be 2 classes of tavern licenses:

(A) Class C/T (spirits, wine, and beer); and

(B) Class D/T (beer and wine).

(4) The Board, in its sound discretion, may require that a tavern (T) licensee file a security plan with the Board. A tavern (T) licensee so required shall comply with the terms of its security plan.

(d)(1) A nightclub license (N) shall be issued only to a nightclub with a security plan. The holder of a nightclub license shall comply with the terms of its security plan.

(2) There shall be two classes of nightclub licenses:

(A) Class C/N (spirits, wine, and beer); and

(B) Class D/N (beer and wine).

(e)(1) A hotel license (H) shall be issued only for a hotel license.

(2) The license shall authorize the sale and service of alcoholic beverages for consumption in the dining rooms, lounges, banquet halls, and other similar facilities on the licensed premises, and in the private rooms of registered guests.

(3) The license shall not authorize the sale and service of alcoholic beverages for consumption in a nightclub on the premises of the hotel. The licensee may also be issued a nightclub license on the premises of the hotel.

(4)(A) The licensee shall file with the Board quarterly statements, on the dates and in the manner prescribed by the Board, reporting for the preceding

quarter: the gross receipts for the establishment; its gross receipts for sales of alcoholic beverages; its gross receipts for the sale of food; its total expenses for the purchase of food and alcoholic beverages; its expenses for the purchase of food; and its expenses for the purchase of alcoholic beverages.

(B) The Board shall make a licensee's quarterly statements available for the purpose of allowing a protestant to determine the gross annual receipts of a licensee.

(5)(A) There shall be 2 classes of hotel licenses:

- (i) Class C/H (spirits, beer, and wine); and
- (ii) Class D/H (beer and wine).

(B)(i) A class C/H license may be issued to:

(I) An establishment that has annual gross food sales in a hotel dining room of at least \$2000 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.

(ii) A class D/H license may be issued to:

(I) An establishment that has annual gross food sales in a hotel dining room of at least \$1500 per occupant (as determined by the establishment's Board-approved certificate of occupancy); or

(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.

(f)(1) A club license shall be issued only for a club.

(2) No license shall be issued to a club which has not been incorporated for at least one year immediately before the filing of an application for the license.

(3) The licensee may permit consumption of alcoholic beverages on the parts of the licensed premises as may be approved by the Board.

(4) There shall be 2 classes of club licenses:

- (A) Class C (spirits, beer, and wine); and
- (B) Class D (beer and wine).

(g)(1) A multipurpose facility license shall be issued only to legitimate theaters, universities, museums, conference centers, art galleries, or facilities (such as the Lincoln Theatre or the D.C. Arena) for the performance of sports, cultural, or tourism-related activities.

(2) The licensee may permit consumption of alcoholic beverages on the parts of the licensed premises as may be approved by the Board.

(3) There shall be 2 classes of multipurpose facility licenses:

- (A) Class C (spirits, beer, and wine); and
- (B) Class D (beer and wine).

(4) The Board, in its sound discretion, may require that a multipurpose facility licensee file a security plan with the Board. A multipurpose facility licensee so required shall comply with the terms of its security plan.

(h)(1) A common carrier license shall be issued only for a passenger-carrying marine vessel serving food or a railroad club or dining car.

(2) Any person operating a railroad in interstate commerce of 100 miles or more may be issued a single license covering all of the railroad's dining and club cars. The license shall identify the railroad dining cars and club cars covered by the license and shall be kept on display at the licensee's principal place of business in the District.

(3) Any person operating a passenger-carrying marine vessel line in the District may be issued a single license covering all of its passenger-carrying marine vessels serving food and its dockside waiting areas for its passengers. The license shall identify the passenger-carrying marine vessels and dockside waiting areas covered by the license and shall be kept on display at the licensee's principal place of business in the District. The license issued shall not cover any permanently berthed vessel.

(4) There shall be 2 classes of common carrier licenses:

(A) Class C (spirits, beer, and wine); and

(B) Class D (beer and wine).

(i)(1) A caterer's license shall be issued only to a caterer.

(2) Notwithstanding any provision of this title, a caterer's license under this subsection shall authorize the licensee to sell, deliver and serve alcoholic beverages for consumption on the premises of a catered event at which the licensee is also serving prepared food.

(3) A caterer's license shall be valid for 3 years.

(4) A caterer licensed under this subsection shall file records with, and maintain records for inspection by, the Board in such manner as the Board shall determine by regulation promulgated under § 25-211(b); provided, that commercial or financial information considered by the Board to be proprietary information or trade secrets, the disclosure of which would result in harm to the competitive position of the licensee, shall not be made available to the public.

(5) Wholesalers and off-premises retailers, class A, may sell alcoholic beverages to caterers licensed under this subsection for catered events of 100 persons or less. Only off-premises retailers, class A, may sell alcoholic beverages to caterers licensed under this subsection for catered events in excess of 100 persons. A caterer that also holds an on-premises retailer's license may purchase alcoholic beverages from wholesalers for use at catered events regardless of the number of persons attending the event.

(j)(1) Cover charges or the sale of items other than food or beverage shall not be included in determining an establishment's gross annual food sales or whether the sale of food accounts for at least 45% of the establishment's gross annual receipts; provided, that minimum charges that are readily identifiable as food or beverage shall be included in calculating whether the establishment is meeting the food sales requirements set forth in § 25-101(43) and this section.

(2) Off-site food sales by a licensee under a license, class C/R, D/R, C/H, or D/H, shall also not be included for purposes of calculating whether the establishment is meeting the food sales requirement set forth in either § 25-101(43) or this section.

(3)(A) Each licensee under a license, class C/R, D/R, C/H, or D/H, shall keep and maintain on the premises for a period of 3 years adequate books and records showing all sales, purchase invoices, and dispositions, including the following:

(i) Sales information that includes the date, the price of food sold, the price of alcoholic beverages sold, and the amount of total sales;

(ii) Purchase information that includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice; and

(iii) Register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales.

(B) Any licensee may file a written request with the Board to have his books and records, except the day to day records or register receipts, kept at an accountant's office or the licensee's office; provided, that the records are made available within 3 days of request by ABRA staff. A licensee may also store its books and records on the premises electronically. The records stored on the premises electronically shall be made immediately available at the request of ABRA staff.

(C) The failure of a licensee under a license, class C/R, D/R, C/H, or D/H, to keep and maintain records as required by this section shall be subject to the following penalties:

(i) One-quarter of non-compliance shall result in a penalty not to exceed \$3,000 and ABRA monitoring;

(ii) Non-compliance after 2 quarters shall result in a penalty not to exceed \$4,500 or license suspension for a period not to exceed 5 days; or

(iii) Non-compliance after 3 or more quarters shall result in a show cause hearing for revocation or a mandatory change in license class.

(D) A violation of this section shall also be a primary tier violation under § 25-830(c).

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(c), 301(c), 51 DCR 6525; Apr. 13, 2005, D.C. Law 15-354, § 102(a)(2), 52

DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 47(c), 53 DCR 6794; July 18, 2008, D.C. Law 17-201, § 2(c), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-353, § 241, 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-361, § 2(a), 56 DCR 1204; Mar. 3, 2010, D.C. Law 18-111, § 2082(n)(2), 57 DCR 181; May 1, 2013, D.C. Law 19-310, § 2(d), 60 DCR 3410.)

Section references. — This section is referenced in § 7-743, § 8-102.01, § 25-101, § 25-112, § 25-830, and § 47-2404.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310

redesignated (a)(2)(A) as (a)(2)(A)(i) and added (a)(2)(A)(ii); added the last sentence in (i)(5); and added the last two sentences in (j)(3)(B).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-115. Temporary license requirements and qualifications.

(a) A temporary license shall authorize the licensee temporarily to sell or permit the consumption of alcoholic beverages at the specific premises described for consumption on the premises where sold. The license may be issued for a banquet, picnic, bazaar, fair, or similar public gathering where food is served for consumption on the premises. No alcoholic beverages shall be sold or served to a customer in an unopened container.

(b) A temporary license shall be issued for no more than 4 consecutive days.

(c) The issuance of a temporary license shall be solely in the discretion of the Board.

(d) If the applicant has failed to control the environment of a previous event associated with a temporary license or has sustained community complaints or police action, the Board may deny the license application.

(e) There shall be 2 classes of temporary licenses:

- (1) Class F (beer and wine); and
- (2) Class G (spirits, beer, and wine).

(f) The holder of a temporary license shall be permitted to receive deliveries from a wholesaler up to 48 hours before a Board-approved event occurring on a Saturday, Sunday, or holiday. The alcoholic beverages delivered pursuant to this subsection shall not be consumed until the date and time of the event and shall be stored in a secure location.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR

8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(c), 49 DCR 6968; May 1, 2013, D.C. Law 19-310, § 2(e), 60 DCR 3410.)

Section references. — This section is referenced in § 1-309.10 and § 25-104.

Legislative history of Law 19-310. — See note to § 25-101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (f).

§ 25-117. Brew pub permit requirements and qualifications.

(a) A brew pub permit shall authorize the licensee to brew malt beverages at one location for consumption at a licensed restaurant, tavern, multipurpose facility, hotel, or nightclub and for sale to licensed wholesalers for the purpose of resale to other licensees. The location used to brew malt beverages shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the brew pub owner in accordance with subsection (b) of this section.

(a-1) A brew pub permit shall authorize the licensee to sell beer in growlers.

(b) A brew pub permit shall be issued only to the licensee under an on-premises restaurant or tavern retailer's license, class C or D, or in conjunction with the issuance of an on-premises restaurant or tavern retailer's license, class C or D.

(c) A brew pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant or tavern; or

(2) The licensee's on-premises retailer license, class C or D, is revoked or cancelled.

(d) A brew pub permit shall be automatically suspended whenever and for the same period of time that the licensee's retailer's license, class C or D, is suspended.

(Jan. 24, 1934, 48 Stat. 324, ch. 4, § 11; Apr. 30, 1934, 48 Stat. 654, ch. 181, § 1; June 18, 1934, 48 Stat. 997, ch. 588; July 2, 1935, 49 Stat. 444, ch. 359; Aug. 27, 1935, 49 Stat. 898, 899, ch. 756, §§ 3-7; June 15, 1938, 52 Stat. 691, ch. 396, §§ 1, 2; May 27, 1949, 63 Stat. 133, ch. 146, title V, § 501; June 29, 1953, 67 Stat. 103, ch. 159, § 404(d); May 31, 1962, 76 Stat. 89, Pub. L. 87-470, § 1; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 2; Apr. 6, 1977, D.C. Law 1-102, § 2(a), (b), 23 DCR 8732; Apr. 18, 1978, D.C. Law 2-73, § 3, 24 DCR 7066; Mar. 5, 1981, D.C. Law 3-157, § 2(b), 27 DCR 5117; Sept. 29, 1982, D.C. Law 4-157, §§ 6, 15, 29 DCR 3617; Mar. 10, 1983, D.C. Law 4-204, § 2, 30 DCR 185; Aug. 2, 1983, D.C. Law, 5-16, § 3, 30 DCR 3193; Mar. 8, 1984, D.C. Law 5-51, § 2(a), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 5, 34 DCR 907; Aug. 17, 1991, D.C. Law 9-40, § 2(b), 38 DCR 4974; May 24, 1994, D.C. Law 10-122, § 2(e), 41 DCR 1658; Mar. 26, 1999, D.C. Law 12-202, § 2(b), 45 DCR 8412; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(1), 46 DCR 3142; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(f), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted “restaurant, tavern, multipurpose facility, hotel, or nightclub” for “restaurant or tavern” in (a), (b), and (c)(1); added (a-1); and substituted

“cancelled or revoked” for “void” in the introductory language of (c).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-124. Wine pub permit requirements and qualifications.

(a) A wine pub permit shall authorize the licensee to manufacture wine at one location from grapes or fruit transported from an area that produces wine to the licensed restaurant, tavern, multipurpose facility, hotel, or nightclub for on-premises consumption and for sale to licensed wholesalers for the purpose of resale to other licensees.

(b) A wine pub permit shall be issued only to the licensee under an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D, in conjunction with the issuance of an on-premises restaurant, tavern, multipurpose facility, hotel, or nightclub license, class C or D.

(c) The location used to manufacture wine shall be on or immediately adjacent to the restaurant, tavern, multipurpose facility, hotel, or nightclub licensed to the wine pub owner in accordance with subsection (b) of this section.

(d) The holder of a wine pub permit may also sell wine to patrons in sealed bottles or other closed containers for off-premises consumption.

(e) The minimum annual fee of the wine pub permit shall be \$5,000.

(f) A wine pub permit shall be cancelled or revoked if:

(1) The restaurant, tavern, multipurpose facility, hotel, or nightclub ceases to be operated as a restaurant, tavern, multipurpose facility, hotel, or nightclub; or

(2) The licensee’s on-premises retailer’s license, class C or D, is revoked or cancelled.

(g) A wine pub permit shall be automatically suspended whenever and for the same period that the licensee’s retailer’s license, class C or D, is suspended

(May 1, 2013, D.C. Law 19-310, § 2(g), 60 DCR 3410.)

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 2. ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION.

Sec.

25-212. New licensee and general public orientation class.

§ 25-212. New licensee and general public orientation class.

ABRA shall establish a new licensee orientation class that shall be available to licensees and the public at no charge. The class curriculum shall include the following:

- (1) A review of relevant provisions contained in both this title and Title 23 of the District of Columbia Municipal Regulations;
- (2) Noise abatement and sound management; and
- (3) How to work proactively with Advisory Neighborhood Commissions, neighborhood and business groups, and residents.

(May 1, 2013, D.C. Law 19-310, § 2(h), 60 DCR 3410.)

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 3. REQUIREMENTS TO QUALIFY FOR LICENSE.

Subchapter I. Applicant Qualifications

Subchapter III. Denial of License

Sec.
25-301. General qualifications for all applicants.

Sec.
25-332. Moratorium on class B licenses.

Subchapter II. Qualification of Establishment

Subchapter VI. Moratorium on Establishments Which Permit Nude Dancing

25-315. Additional considerations for renewal of licenses.

25-374. Transfer of location of establishments which permit nude dancing.

Subchapter I. Applicant Qualifications.

§ 25-301. General qualifications for all applicants.

(a) Before issuing, transferring to a new owner, or renewing a license, the Board shall determine that the applicant meets all of the following criteria:

(1) The applicant is of good character and generally fit for the responsibilities of licensure.

(2) The applicant is at least 21 years of age.

(3) The applicant has not been convicted of any felony in the 10 years before filing the application.

(4) The applicant has not been convicted of any misdemeanor bearing on fitness for licensure in the 5 years before filing the application.

(5) Except in the case of an application for a solicitor's license, the applicant is the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself or herself and not as the agent of any other individual, partnership, association, limited liability company, or corporation not identified in the application.

(6) The licensed establishment will be managed by the applicant in person or by a Board-licensed manager.

(7) The applicant has complied with all the requirements of this title and regulations issued under this title.

(a-1) To determine whether an applicant for a new license meets the criteria of subsection (a)(1) of this section, the Board shall examine records, covering the last 10 years from the date of application, maintained by ABRA regarding prior violations of the District's alcohol laws and regulations by the applicant or establishments owned or controlled by the applicant.

(b) Notwithstanding § 47-2861(1)(B), the Board shall not issue a license or permit to an applicant if the applicant has failed to file required District tax returns or owes more than \$ 100 in outstanding debt to the District as a result of the items specified in § 47-2862(a)(1) through (9), subject to the exceptions specified in § 47-2862(b).

(c) To determine whether an applicant for a new retailer or wholesaler license meets the criteria of subsection (a)(3) and (4) of this section, the Board may obtain criminal history records of criminal convictions maintained by the Federal Bureau of Investigation and the Metropolitan Police Department. The Board shall:

(1) Inform the applicant that a criminal background check will be conducted;

(2) Obtain written approval from the applicant to conduct a criminal background check;

(3) Coordinate with the Metropolitan Police Department to obtain a set of qualified fingerprints from the applicant; and

(4) Obtain any additional identifying information from the applicant that is required for the Metropolitan Police Department and the Federal Bureau of Investigation to complete a criminal background check.

(d) The Board shall coordinate with the Metropolitan Police Department to adopt procedures necessary to facilitate this objective.

(e) The fingerprint card shall not be maintained by the Board or by the Metropolitan Police Department and shall be returned to the applicant after the completion of the criminal background check.

(f) Once notified, the Board shall seal, set aside, expunge, and otherwise maintain any record received pursuant to this section so that the record is in compliance with any order issued by the Superior Court of the District of Columbia pursuant to a sealing, set aside, or expungement statute, including Chapter 8 of Title 16 and Chapter 9 of Title 24. Once notified, the Board shall also seal, set aside, expunge, and otherwise maintain any record received pursuant to this section so that the record is in compliance with any court order or official government request or statement from the jurisdiction that is the source of that record.

(g) The Board shall maintain the confidentiality of any information returned from the Metropolitan Police Department and the Federal Bureau of Investigation and use such information only for the purpose of determining whether the applicant satisfies the criteria set forth in subsection (a)(3) and (4) of this section.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat.

103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-192, § 1012(a), 53 DCR 6899; Mar. 25, 2009, D.C. Law 17-353, § 132, 56 DCR 1117; Nov. 6, 2010, D.C. Law 18-259, § 6, 57 DCR 5591; May 1, 2013, D.C. Law 19-310, § 2(i), 60 DCR 3410.)

Section references. — This section is referenced in § 25-316, § 25-402, § 25-405, § 25-406, and § 25-410.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a-1).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter II. Qualification of Establishment.

§ 25-315. Additional considerations for renewal of licenses.

(a) If proper notice has been given, as provided in subchapter II of Chapter 4, and no objection to the appropriateness of the establishment is filed, the establishment shall be presumed to be appropriate for the locality, section, or portion of the District where it is located.

(b)(1) The Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement.

(2) The Board shall prepare a check sheet documenting the licensee's compliance. This check sheet shall be available to the public for review.

(c) If an application for license renewal is made the subject of contested proceedings and the license expires before the Board's decision on the renewal application, the Board may extend the expiration date during the pendency of the decision on the renewal application.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548;

May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(j), 60 DCR 3410.)

Section references. — This section is referenced in § 25-313, § 25-316, and § 25-433.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted

“settlement agreement” for “voluntary agreement” in (b)(1).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Denial of License.

§ 25-332. Moratorium on class B licenses.

(a)(1) After [May 1, 2013], the Board may issue new off-premises retailer’s class B licenses, if the Board finds that the number of retailer’s class B licenses is less than the quota set forth in § 25-331(b). A condition of the license shall be that the sale of alcoholic beverages for consumption off-premises shall constitute no more than 25% of the total volume of gross receipts of the licensee on an annual basis.

(2) No more than one retailer’s license, class B, issued under this subsection shall be issued to the same applicant or to an individual with an ownership interest in another license issued under this subsection.

(3) The issuance of new retailer’s licenses, class B, under this subsection shall be audited by ABRA and subject to the reporting requirements set forth in § 25-112(e).

(b) The moratorium shall have a prospective effect.

(c) This moratorium shall not apply to an applicant for an off-premises retailer’s license, class B, for the sale of alcoholic beverages in an establishment if:

(1) The primary business and purpose is the sale of a full range of fresh, canned, and frozen food items, and the sale of alcoholic beverages is incidental to the primary purpose;

(2) The sale of alcoholic beverages constitutes no more than 15% of the total volume of gross receipts on an annual basis;

(3) The establishment is located in a C-1, C-2, C-3, C-4, or C-5 zone or, if located within the Southeast Federal Center, in the SEFC/C-R zone;

(4) The establishment is a full service grocery store which is newly constructed with a certificate of occupancy issued after January 1, 2000, or is an existing store which has undergone renovations in excess of \$500,000 during the preceding 12 months in which an application is made; and

(5) The opinion of the ANC, if any, has been given great weight.

(d) An exception to the moratorium shall be granted for 4 new class B licenses on Connecticut Avenue, N.W., between N Street and Florida Avenue, N.W., after October 22, 1999; provided, that no licensee shall devote more than 3,000 square feet to the sale of alcoholic beverages.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(g), 49 DCR 6968; Sept. 30, 2004, D.C. Law 15-187, § 101(l), 51 DCR 6525; Oct. 20, 2011, D.C. Law 19-23, § 2(e), 58 DCR 6509; May 1, 2013, D.C. Law 19-310, § 2(k), 60 DCR 3410.)

Section references. — This section is referenced in § 25-112.

rewrote (a), which read: “No new off-premises retailer’s license, class B, shall be issued.”

Effect of amendments.

Legislative history of Law 19-310. — See note to § 25-101.

The 2013 amendment by D.C. Law 19-310

Subchapter VI. Moratorium on Establishments Which Permit Nude Dancing.

§ 25-374. Transfer of location of establishments which permit nude dancing.

(a) A license under § 25-371(b) may only be transferred to a location in the Central Business District or, if the licensee is currently located in a CM or M-zoned district, transferred within the same CM or M-zoned district, as identified in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission of the District of Columbia; provided, that no license shall be transferred to any premises which is located:

(1) Six hundred feet or less from another licensee operating under § 25-371(b); and

(2) Six hundred feet from a building with a certificate of occupancy for residential use or a lot or building with a permit from the Department of Consumer and Regulatory Affairs for residential construction at the premises.

(a-1) On or after January 1, 2013, a class CN license with a nude dancing endorsement under § 25-371(b) shall not be transferred into Ward 5, as defined by [§ 1-1041.03]; provided, that this section shall not prohibit the transfer of an existing CN license with a nude dancing endorsement within Ward 5.

(b)(1) Notwithstanding the restrictions of subsection (a) and (a)(1) of this section, but subject to the provisions in subsection (a)(2) of this section, if a licensee was located in a CM or M-zoned district, in or within 2000 feet of the footprint of the Ballpark, as of January 1, 2006, or was located within the Skyland Development Project site as described in § 2-1219.19(c)(1) [repealed], as of January 1, 2007, then within one year of [October 18, 2007] a license may be transferred to:

(A) A location in any CM or M-zoned district, if the licensee was located in a CM or M-zoned district, respectively, as identified in the zoning regulations of the District of Columbia and shown in the official atlases of the Zoning Commission of the District of Columbia;

(B) A location in any CM-zoned district, if the licensee was located within the Skyland Development Project site; or

(C) In any C-3, C-4, or C-5 zone within 5000 feet from the Ballpark footprint.

(2) For the purposes of this subsection, the term “Ballpark” shall have the same meaning as provided in § 47-2002.05(a)(1)(A).

(c)(1) No more than 2 licensees may be transferred to any one ward pursuant to subsection (b) of this section.

(2) Licensees transferring to a C-4 zone shall not count against the ward limitations set forth in paragraph (1) of this subsection.

(d) Notwithstanding any other provision, licensees relocating pursuant to subsection (b) of this section shall not locate within 1,200 feet from each other.

(e) No portion of any establishment granted a license pursuant to subsection (b) of this section shall be located within 600 feet of a church, school, library, playground, or the area under the jurisdiction of the Commission of Fine Arts pursuant to §§ 6-611.01 — 6-611.02.

(f) All licensees shall consult the Advisory Neighborhood Commission in the area where the license is transferred pursuant to subsection (b) of this section regarding entering a settlement agreement with the community.

(g) Notwithstanding any other provision of this section, a license under subsection (b) of this section shall not be transferred prior to November 1, 2007, or to a location that has been rezoned by that date to a residential, C-1, or C-2 zoning district classification as identified in the Zoning Regulations of the District of Columbia.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 18, 2007, D.C. Law 17-24, § 2, 54 DCR 8011; May 1, 2013, D.C. Law 19-310, § 2(l), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a-1); and substituted “settlement agreement” for “voluntary agreement” in (f).

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 4. APPLICATION AND REVIEW PROCESSES.

Subchapter I. Application Requirements

Sec.

25-402. New license application for manufacturer, wholesaler, or retailer.

25-403. License renewal application for manufacturer, wholesaler, or retailer.

Subchapter II. Notice of Application Proceedings

25-421. Notice by Board.

Subchapter III. Review of License Applications

25-432. Standard review procedures.

25-433. Decisions of the board; petition for reconsideration.

Sec.

25-434. Influencing the application process.

Subchapter IV. Review and Resolution Procedures

25-446. Settlement agreements; approval process; penalties for violations.

25-446.01. Settlement agreements — enforceable provisions.

25-446.02. Settlement agreements — unenforceable provisions.

Subchapter I. Application Requirements.

§ 25-402. New license application for manufacturer, wholesaler, or retailer.

(a) The application of a person applying for a manufacturer’s, wholesaler’s, or retailer’s license shall include:

(1) In the case of an individual applicant, the trade name of the business, if applicable, and the name and address of the individual; in the case of a partnership or limited liability company applicant, the trade name of the

business, if applicable, and the names and addresses of each member of the partnership or limited liability company; and in the case of a corporate applicant, the legal name, trade name, place of incorporation, principal place of business, and the names and addresses of each of the corporation's principal officers, directors, and shareholders holding, directly or beneficially, 10% or more of its common stock;

(2) The name and address of the owner of the establishment for which the license is sought and the premises where it is located; provided, that this requirement shall not apply to applicants for a solicitor's license;

(3) The class of license sought;

(4) The proximity of the establishment to the nearest public or private, elementary, middle, charter, junior high, or high school, and the name of the school;

(5) The size and design of the establishment, which shall include both the number of seats (occupants) and the number of patrons permitted to be standing, both inside and on any sidewalk café or summer garden.

(6) A detailed description of the nature of the proposed operation, including the following:

(A) The type of food to be offered, if any;

(B) The type of entertainment to be offered, if any;

(C) The goods and services to be offered for sale, in addition to alcoholic beverages, if any;

(D) The hours during which the establishment plans to sell alcoholic beverages;

(E) If different from those stated in subparagraph (D) of this paragraph, the hours during which the establishment plans to remain open for the sale of goods or services other than alcoholic beverages and a description of the provisions planned for the storage of the alcoholic beverages, as required under § 25-754, during hours when the sale of alcoholic beverages is prohibited;

(7) An affidavit that complies with § 47-2863(b);

(8) Documents or other written statements or evidence establishing to the satisfaction of the Board that the person applying for the license meets all of the qualifications set forth in § 25-301; and

(9) Written statements or evidence establishing to the satisfaction of the Board that the applicant has complied with the requirements of § 25-423.

(b) The applicant for a restaurant or hotel license shall attest that it will receive at least 45% of its gross annual receipts from the sale of food during each year of the license period.

(c) The Board shall establish application procedures for the issuance of a caterer's license under § 25-211(b).

(d)(1) The applicant for a nightclub license shall file a written security plan with the Board.

(2) The Board may require, in its sound discretion, the applicant for a restaurant, tavern, or multipurpose facility license to file a written security plan with the Board.

(3) A written security plan filed pursuant to this subsection shall include at least the following elements:

(A) A statement on the type of security training provided for, and completed by, establishment personnel, including:

- (i) Conflict resolution training;
- (ii) Procedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department; and
- (iii) Procedures for crowd control and preventing overcrowding;

(B) The establishment's procedures for permitting patrons to enter;

(C) A description of how security personnel are stationed inside and in front of the establishment and the number and location of cameras used by the establishment;

(D) Procedures in place to prevent patrons from becoming intoxicated and ensuring that only persons 21 years or older are served alcohol;

(E) A description of how the establishment maintains an incident log;

(F) The establishment's procedures for preserving a crime scene; and

(G) In the event that cameras are required to be installed by the Board or in accordance with the establishment's security plan, the establishment shall ensure the following:

(i) The cameras utilized by the establishment are operational;

(ii) Any footage of a crime of violence or a crime involving a gun is maintained for a minimum of 30 days; and

(iii) The security footage is made available within 48 hours upon the request of ABRA or the Metropolitan Police Department.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-192, § 1012(b), 53 DCR 6899; July 18, 2008, D.C. Law 17-201, § 4(b), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-353, § 242, 56 DCR 1117; May 1, 2013, D.C. Law 19-310, § 2(m), 60 DCR 3410.)

Section references. — This section is referenced in § 25-404 and § 25-433.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 redesignated former (d), (e), and (f) as (d)(1),

(d)(2), and (d)(3), respectively; and rewrote (d)(3).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-403. License renewal application for manufacturer, wholesaler, or retailer.

(a) An applicant for license renewal shall verify, by affidavit, the accuracy of its application, including all documents and submissions constituting a part of

the application for its initial license or, if appropriate, at the time of a Board-approved substantial change in operation.

(b) In the case of an application for renewal of a restaurant or hotel license, the applicant shall present evidence establishing that the sale of food accounted for at least 45% of gross annual receipts from the operation of the restaurant or of the dining room of the hotel during the current license period.

(c) The applicant shall submit documents or other written evidence establishing to the satisfaction of the Board that the applicant has complied with the requirements of § 25-423.

(d) The Board shall establish application procedures for the renewal of a caterer's license under § 25-211(b).

(e)(1) In the case of an application for renewal of a nightclub license, the applicant shall submit a written security plan.

(2) In the case of an application for renewal for a restaurant, tavern, or multipurpose facility license, the Board may, in its sound discretion, require that the applicant submit a written security plan.

(3) A written security plan filed pursuant to this subsection shall include at least the following elements:

(A) A statement on the type of security training provided for, and completed by, establishment personnel, including:

(i) Conflict resolution training;

(ii) Procedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department; and

(iii) Procedures for crowd control and preventing overcrowding;

(B) The establishment's procedures for permitting patrons to enter;

(C) A description of how security personnel are stationed inside and in front of the establishment and the number and location of cameras used by the establishment;

(D) Procedures in place to prevent patrons from becoming intoxicated and ensuring that only persons 21 years or older are served alcohol;

(E) A description of how the establishment maintains an incident log;

(F) The establishment's procedures for preserving a crime scene; and

(G) In the event that cameras are required to be installed by the Board or in accordance with the establishment's security plan, the establishment shall ensure the following:

(i) The cameras utilized by the establishment are operational;

(ii) Any footage of a crime of violence or a crime involving a gun is maintained for a minimum of 30 days; and

(iii) The security footage is made available within 48 hours upon the request of ABRA or the Metropolitan Police Department.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987,

D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; July 18, 2008, D.C. Law 17-201, § 4(c), 55 DCR 6289; May 1, 2013, D.C. Law 19-310, § 2(n), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 redesignated (e), (f), and (g) as (e)(1), (e)(2), and (e)(3), respectively; and rewrote (e)(3).

Legislative history of Law 19-310. — See

note to § 25-101.

Subchapter II. Notice of Application Proceedings.

§ 25-421. Notice by Board.

(a) Upon the receipt of an application for the issuance or renewal, for a substantial change in operation as determined by the Board under 25-404, or for the transfer of a license to a new location, of a retailer's license, the Board shall give notice of the application to the following parties:

- (1) The Council;
- (2) Repealed;
- (3) Repealed;

(4) Any ANC within 600 feet of where the establishment is or will be located; and

(5) A citizens association meeting the requirements of § 25-601(3); provided, that the citizens association has, at least 30 days before the Board's receipt of the application, registered with ABRA by providing a copy of its charter, and an e-mail or other electronic address in a form consistent with ABRA's procedures.

(b) The notice shall contain the legal name and trade name of the applicant, the street address of the establishment for which the license is sought, the class of license sought, and a description of the nature of the operation the applicant has proposed or the proposed change in operation. The description shall include the hours of sales or service of alcoholic beverages.

(c) The notice to the Board of Education shall state the proximity of the establishment to the nearest public school of the District and the name of the nearest public school.

(d) The notice shall state that persons objecting to approval of the application are entitled to be heard before the granting of the license, and shall inform the recipient of the final day of the protest period and the date, time, and place of the administrative review in accordance with subchapter III of this chapter.

(e) The Board shall give notice to the ANC by first-class mail, postmarked not more than 7 days after the date of submission, and addressed to the following persons:

- (1) The ANC office, with a copy for each ANC member;
- (2) The ANC chairperson, at his or her home address of record; and

(3) The ANC member in whose single-member district the establishment is or will be located, at his or her home address of record.

(f) The Board shall publish the notices required under this section in the District of Columbia Register.

(g) Within 180 days after May 3, 2001, the Board shall implement a procedure by which it will provide additional notification, via electronic media, to the public and ANCs, of these notification requirements, and the publication of proposed and adopted regulations.

(h) The requirements of this section shall not apply to applicants for a caterer's license.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987, D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, §§ 101(s), 201(e), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(o), 60 DCR 3410.)

Section references. — This section is referenced in § 25-353, § 25-423, and § 25-446.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (a)(5); and made a related change.

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Review of License Applications.

§ 25-432. Standard review procedures.

(a) If no protest has been received by the Board during the protest period, the Board shall schedule an administrative review to consider the application within 10 days after the end of the protest period.

(b) If a protest has been received by the Board during the protest period, the Board shall take the following actions:

(1) The Board shall schedule a protest hearing, to be held within 75 days of the end of the protest period, for new license applications to receive testimony and other evidence regarding the application in accordance with §§ 25-442 and 25-444.

(2)(A) The parties shall be informed of their obligation to attend a settlement conference under § 25-445 for the purpose of discussing and resolving, if possible, the objections raised by the protestants.

(B) The parties shall be informed of their rights and responsibilities with respect to reaching a settlement under §§ 25-445 and 25-446.

(C) At the request of all parties, and if a settlement conference would be unlikely to succeed, the Board may waive the parties' obligation to attend a settlement conference.

(3) The Board shall issue a decision in accordance with § 25-433.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(p), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 inserted "to be held within 75 days of the end of the protest period, for new license applications" in (b)(1).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-433. Decisions of the board; petition for reconsideration.

(a) No application shall be approved until the Board has determined that the applicant has complied with § 25-402(a)(8) through (10) [now (7) through (9)] (and § 25-402(b) if the applicant is a restaurant or hotel) or, in the case of a renewal, has fulfilled the license requirements of this title. The Board shall make findings of fact with respect to each requirement, including the appropriateness standards set forth in §§ 25-313, 25-314, and 25-315, and the food sales requirements for restaurants and hotels.

(b) For the purposes of this section, the record shall close when a hearing is concluded. Parties shall have 30 days after the conclusion of the hearing to submit proposed findings of fact and conclusions of law to the Board.

(c) Within 90 days after the close of the record, the Board shall issue its written decision accompanied by findings of fact and conclusions of law. For new license applications, the Board shall issue its written decisions accompanied by findings of fact and conclusions of law within 60 days after the close of the record. The Board shall publish and maintain a compilation of its decisions and orders.

(d)(1) A petition for reconsideration, rehearing, reargument, or stay of a decision or order of the Board may be filed by a party within 10 days after the date of receipt of the Board's final order.

(2) The filing or the granting of a petition filed under paragraph (1) of this subsection shall not stay the final order unless the stay is specifically ordered by the Board.

(3) A stay shall be granted only upon good cause, which shall consist of unusual or exceptional circumstances.

(e) The Board may establish procedures under § 25-211(b) to consider an application which is not protested during the protest period.

(Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691, ch. 396, § 3; June 29, 1953, 67 Stat. 103, ch. 159, § 404(e), (f); Aug. 2, 1968, 82 Stat. 616, Pub. L. 90-450, title IV, § 404; Mar. 5, 1981, D.C. Law 3-146, § 4, 27 DCR 4753; Sept. 29, 1982, D.C. Law 4-157, §§ 8, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(4), (c), 30 DCR 5927; June 29, 1984, D.C. Law 5-97, § 2, 31 DCR 2556; Mar. 7, 1987,

D.C. Law 6-217, § 9, 34 DCR 907; June 5, 1987, D.C. Law 7-7, § 2, 34 DCR 2640; Oct. 3, 1992, D.C. Law 9-174, § 2(b), (c), 39 DCR 5859; May 24, 1994, D.C. Law 10-122, § 2(f), 41 DCR 1658; Apr. 20, 1999, D.C. Law 12-261, § 2003(q)(2), 46 DCR 3142; Oct. 20, 1999, D.C. Law 13-39, § 2, 46 DCR 6548; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 1, 2002, D.C. Law 14-190, § 1702(i), 49 DCR 6968; May 1, 2013, D.C. Law 19-310, § 2(q), 60 DCR 3410.)

Section references. — This section is referenced in § 25-432.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added the second sentence in (c).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-434. Influencing the application process.

(a) A person shall not provide, offer to provide, request, or receive anything of value for the personal use, enjoyment, or profit of an individual in exchange for the individual's promise not to exercise his or her rights provided under this title to object to, or petition against, a license application.

(b) Any person who violates subsection (a) of this section shall be guilty of a criminal misdemeanor, and, upon conviction, shall be imprisoned for not more than 90 days, or fined not more than the amount set forth in [§ 22-3571.01], or both.

(Jan. 24, 1934, ch. 4, § 14a, as added Oct. 3, 1992, D.C. Law 9-174, § 2(d), 39 DCR 5859; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$300” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IV. Review and Resolution Procedures.

§ 25-446. Settlement agreements; approval process; penalties for violations.

(a) The applicant and any protestant may, at any time, negotiate a settlement and enter into a written settlement agreement setting forth the terms of the settlement.

(b)(1) The signatories to the agreement shall submit the agreement to the Board for approval.

(2) Except as provided in § 25-446.02, all provisions of a settlement agreement approved by the Board shall be enforceable by ABRA or the Board.

(3) A settlement agreement not approved by the Board shall not be enforced by ABRA or the Board.

(c) If it determines that the settlement agreement complies with all applicable laws and regulations and the applicant otherwise qualifies for licensure, the Board shall approve the license application, conditioned upon the licensee's compliance with the terms of the settlement agreement. The Board shall incorporate the text of the settlement agreement in its order and the settlement agreement shall be enforceable by the Board.

(d)(1) Unless a shorter term is agreed upon by the parties, a settlement agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board.

(2) The Board may accept an application to amend or terminate a settlement agreement by fewer than all parties in the following circumstances:

(A) During the license's renewal period; and

(B) After 4 years from the date of the Board's decision initially approving the settlement agreement.

(3) Notice of an application to amend or terminate a settlement agreement shall be given both to the parties of the agreement and to the public at the time of the applicant's renewal application according to the renewal procedures required under §§ 25-421 through 25-423.

(4) The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

(A)(i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or

(ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;

(B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and

(C) The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

(5) To fulfill the good faith attempt criteria of paragraph (4)(A)(ii) of this subsection, a sworn affidavit from the applicant shall be filed with the Board at the time that an application to amend a settlement agreement by fewer than all parties is filed stating that either:

(A) A meeting occurred between the parties which did not result in agreement; or

(B) The non-applicant parties refused to meet with the applicant.

(e) Upon a determination that a licensee has violated a settlement agreement, the Board shall penalize the licensee according to the provisions set forth for violations of a license in Chapter 8 of this title.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(t), 51 DCR 6525; May 1, 2013, D.C. Law 19-310, § 2(r), 60 DCR 3410.)

Section references. — This section is referenced in § 25-432 and § 25-722.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 rewrote the section heading, which read: "Voluntary agreements; approval process, show cause hearing for violation"; substituted "settlement agreement" for "voluntary agreement" throughout the section; redesignated (b) as (b)(1) and added (b)(2) and (b)(3); and rewrote

(e), which read: "The Board shall initiate a show cause hearing upon evidence that a licensee has violated a voluntary agreement. Upon a determination that the licensee has violated the voluntary agreement, the Board shall penalize the licensee according to the provisions set forth for violations of a license in Chapter 8."

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-446.01. Settlement agreements — enforceable provisions.

A settlement agreement enforceable by the Board under this subchapter may include:

(1) Provisions allowing or prohibiting entertainment and the hours that entertainment would be allowed;

(2) Specific methods to mitigate the level of noise outside the establishment, including:

(A) Sound attenuation elements;

(B) Requiring that the doors and windows of the establishment remain closed (except for ingress and egress) during hours of entertainment;

(C) Restricting indoor entertainment to a specific area of the establishment; and

(D)(i) Specification of physical attributes to mitigate noise emanating from an outdoor facility.

(ii) For the purposes of this subparagraph, the term "physical attributes" may include architectural features, sound barriers, and placement of speakers;

(3) Descriptions of reasonable efforts that the applicant or existing licensee will take to control litter and other debris in the immediate area surrounding the establishment, including:

(A) The frequency that the applicant or existing licensee will monitor the area;

(B) The days and time that the applicant or existing licensee will remove trash; and

(C) The efforts to be made by the licensee to limit rat and vermin infestation;

(4) Descriptions of parking arrangements, including the use of valet service contingent on proper permitting by the District Department of Transportation;

(5) Requirements that the applicant or existing licensee maintain an incident log and that the incident log be made available to ABRA and the Board, upon request;

(6) A notice to cure provision;

(7) Restrictions on hours of operation and sales and service for a new or existing licensee's facilities;

(8) Descriptions of how the licensee will address specific issues in determining the hours of operation, including:

(A) The licensee's history of previous violations;

(B) The proximity of the establishment to residences; and

(C) The hours of operation and sales and service of alcohol for other existing licensed establishments in the area;

(9) Restrictions on the utilization of floors, occupancy, and the number of seats for existing licensees and address specific issues in determining occupancy issues, including:

(A) The licensee's history of previous violations;

(B) The proximity of the establishment to residences; and

(C) The hours of operation and sales and service of alcohol for other existing licensed establishments in the area; and

(10) Stipulations that the establishment will comply with existing District statutes and regulations, or will comply with privileges granted by ABRA or any other District agency.

(May 1, 2013, D.C. Law 19-310, § 2(s), 60 DCR 3410.)

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-446.02. Settlement agreements — unenforceable provisions.

The Board shall not enforce the following provisions if included in a settlement agreement covered by this subchapter:

(1) Restraints on the ability of an applicant or existing licensee to operate its business, including:

(A) Requirements that the ANC or other community members approve future ownership changes;

(B) Requirements that the ANC or other community members be notified of intent to transfer ownership;

(C) Prohibitions against the applicant or existing licensee applying for a change in license class;

(D) A requirement that the applicant or existing licensee change the license class before selling the license;

(E) Requirements that prohibit the licensee from applying for changes to licensed operation procedures, including applications for summer gardens, sidewalk cafes, rooftop decks, entertainment endorsements, and changes of hours:

(F) Mandates regarding specific brands of alcohol or pricing for alcohol;

(G) Restrictions on the age of patrons; and

(H) Requirements that the applicant or existing licensee use a specific company for services;

(2) Statements that create administrative procedures in addition to those required by ABRA or any other District agency;

(3) A requirement that the applicant or existing licensee attend ANC meetings or other community meetings;

(4) Statements or requirements that the applicant or existing licensee:

(A) Provide money, special considerations, or other financial benefits to the community;

(B) Join any group; or

(C) Hire local individuals; and

(5) Any requirement that contracts, incident logs, or similar documents, be made available to the ANC or other community groups or members.

(May 1, 2013, D.C. Law 19-310, § 2(s), 60 DCR 3410.)

Section references. — This section is referenced in § 25-446.

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 5. ANNUAL FEES.

Sec.
25-501. Annual fees.

§ 25-501. Annual fees.

(a) License fees shall be paid annually. The fee for the first year shall be paid at the time of application and the renewal fee shall be paid on or before the anniversary date of issuance of the license.

(b) The applicant shall pay the initial license fee to the D.C. Treasurer. The applicant's duplicate receipt shall accompany the application for license. If the application for the license is denied, the fee shall be returned. This subsection shall not apply to an application for a temporary license.

(c) A licensee's failure to timely remit the annual fee shall be cause for the Board to suspend the license until the licensee pays the fee and any fines imposed by the Board for late payment. If a licensee is 90 days delinquent on payment of the renewal fee, the Board shall give notice to the licensee of its intent to revoke the license. The licensee shall have 14 days to respond to the notice. If the Board thereafter determines that the failure to pay the fees and fines is not for good cause, the Board shall revoke the license.

(d) The Board may establish license periods at intervals necessary to facilitate efficient processing of applications. If the Board changes a license period, the licensee shall pay the proportionate amount of the annual license fee. If the Board issues a license for less than one year, the licensee shall pay a fee reduced by the proportionate amount of the annual fee.

(e) The fee for a temporary license shall be assessed according to the number of days for which the license is issued and shall be paid at the time of the application.

(f) The minimum fee for a stipulated license issued by the Board pursuant to section 200 of Title 23 of the District of Columbia Municipal Regulations (23 DCMR § 200) shall be \$100.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(t), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (f).

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 6. PROTESTS, REFERENDUM, AND COMPLAINTS.

Sec.

25-601. Standing to file protest against a license.

25-601.01. Certain documents to be made available.

Sec.

25-609. ANC comments.

§ 25-601. Standing to file protest against a license.

The following persons may protest the issuance or renewal of a license, the approval of a substantial change in the nature of operation as determined by the Board under § 25-404, or the transfer of a license to a new location:

(1) An abutting property owner;

(2) A group of no fewer than 5 residents or property owners of the District sharing common grounds for their protest; provided, that in a moratorium zone established under § 25-351 (or in existence as of May 3, 2001), a group of no fewer than 3 residents or property owners of the District sharing common grounds for their protest;

(3) A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, that the following conditions are met:

(A) Membership in the citizens association is open to all residents of the area represented by the association; and

(B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting given to the voting body and the applicant at least 7 days before the date of the meeting;

(4) An affected ANC;

(5) In the case of property owned by the District within a 600-foot radius of the establishment to be licensed, the Mayor;

(6) In the case of property owned by the United States within a 600-foot radius of the establishment to be licensed, the designated custodian of the property; or

(7) The Metropolitan Police Department District Commander, or his or her designee, in whose Police District the establishment resides.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(d), 48 DCR 7612; Sept. 30, 2004, D.C. Law 15-187, § 101(x), 51 DCR 6525; Mar. 2, 2007, D.C. Law 16-191, § 47(a), 53 DCR 6794; May 1, 2013, D.C. Law 19-310, § 2(u), 60 DCR 3410.)

Section references. — This section is referenced in § 25-211, § 25-351, § 25-421, § 25-601.01, § 25-602, and § 25-609.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 deleted “a new owner license renewal” following “§ 25-404” in the introductory language; and

substituted “meeting given to the voting body and the applicant at least 7 days before the date of the meeting” and a semicolon for “meeting being given at least 10 days before the date of the meeting” and a closing period in (3)(B).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-601.01. Certain documents to be made available.

An ANC, or citizens association meeting the requirements of § 25-601(3), may request from ABRA or the Board a copy of a contract to which a licensee is a party, an incident log kept by a licensee, or similar document, if obtained by ABRA or the Board pursuant to this title.

(May 1, 2013, D.C. Law 19-310, § 2(v), 60 DCR 3410.)

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-609. ANC comments.

(a) The affected ANC shall notify the Board in writing of its recommendations, if any, and serve a copy upon the applicant or licensee not less than 7 calendar days before the date of the hearing. Whether the ANC participates as a protestant, the Board shall give great weight to the ANC recommendations as required by subchapter V of Chapter 3 of Title 1. The applicant or licensee shall have the opportunity to respond to the ANC recommendations in a manner to be prescribed in the rules adopted by the Board.

(b) In the event that an affected ANC submits a settlement agreement to the Board on a protested license application, the Board, upon its approval of the settlement agreement, shall dismiss any protest of a group of no fewer than 5 residents or property owners meeting the requirements of § 25-601(2). The Board shall not dismiss a protest filed by another affected ANC or by a citizens association meeting the requirements of § 25-601(3) upon the Board’s approval of an ANC’s settlement agreement submission.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(w), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 rewrote the section.

Legislative history of Law 19-310. — See note to § 25-101.

CHAPTER 7. STANDARDS OF OPERATION.

Subchapter II. Posting of Signs

Sec.

25-711. Posting and carrying of licenses.

Subchapter III. Hours; Noise Restrictions; Control of Litter

25-722. Hours of sale and delivery for off-premises retail licensees.

25-723. Hours of sale and service for on-premises retail licensees and temporary licensees.

25-724. Board authorized to further restrict hours of operation.

25-725. Noise from licensed premises.

Subchapter VIII. Reporting; Importation

25-772. Unlawful importation of beverages.

Subchapter IX. Minors and Intoxicated Persons

Sec.

25-783. Production of valid identification document required; penalty.

25-785. Delivery, offer, or otherwise making available to persons under 21; penalties.

Subchapter X. Temporary Surrender of License — Safekeeping

25-791. Temporary surrender of license — Safekeeping.

Subchapter II. Posting of Signs.

§ 25-711. Posting and carrying of licenses.

(a) A person receiving a license to manufacture, sell, or permit the consumption of alcoholic beverages shall frame the license under glass and post it conspicuously in the licensed establishment. If a settlement agreement is a part of the license, the license shall be marked "settlement agreement on file" by the Board, and the licensee shall make a copy of the settlement agreement immediately accessible to any member of the public, official of ABRA, or officer of the Metropolitan Police Department upon request.

(b) The licensee under a retail license or a club license, shall post, in a conspicuous place on the front window or front door of the licensee's premises, the correct name or names of the licensee or licensees and the class and number of the license in plain and legible lettering not less than one inch nor more than 1.25 inches in height.

(c) A licensee under a temporary license shall have the license available for inspection by any member of the Board, employee of the Board, or member of the Metropolitan Police Department during the event for which the license was issued.

(d) A licensee under a solicitor's license shall, while soliciting orders, carry the license upon his or her person and shall exhibit the license, upon request, to any member of the Board, employee of the Board, or member of the Metropolitan Police Department.

(e) A licensee under a manager's license shall, while managing a licensed establishment, carry the license upon his or her person and shall exhibit the license, upon request, to any member of the Board, employee of the Board, or member of the Metropolitan Police Department.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(x), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted “settlement agreement” for “voluntary agreement” throughout (a).

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter III. Hours; Noise Restrictions; Control of Litter.

§ 25-722. Hours of sale and delivery for off-premises retail licensees.

(a) A licensee under an off-premises retailer’s license, class A or B, may sell and deliver alcoholic beverages only between the hours of 7:00 a.m. and midnight, Monday through Saturday, and during those same hours on December 24 and 31 of each year, subject to voluntary agreements [settlement agreements] pursuant to § 25-446.

(b) The Board may also permit a licensee under an off-premises retailer’s license, class A or B, to sell or deliver alcoholic beverages between the hours of 7:00 a.m. and midnight on Sundays, subject to voluntary agreements [settlement agreements] pursuant to § 25-446.

(c) A licensee under a retailer’s license, class B, which meets the requirements of § 25-303(c)(1) through (3), may also sell or deliver alcoholic beverages between the hours of 9:00 a.m. and 10:00 p.m. on Sundays and between the hours of 10:00 p.m. and midnight, Monday through Sunday, and on December 24 and December 31 of each year.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(z), 51 DCR 6525; Sept. 14, 2011, D.C. Law 19-21, § 8122, 58 DCR 6226; Sept. 20, 2012, D.C. Law 19-168, § 2052, 59 DCR 8025; May 1, 2013, D.C. Law 19-310, § 2(y), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123.

Legislative history of Law 19-310. — See note to § 25-101.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 substituted “class A or B” for “class B” in (b).

§ 25-723. Hours of sale and service for on-premises retail licensees and temporary licensees.

(a) The licensee under a hotel license may make available in the room of a registered adult guest, and charge to the registered guest if consumed, miniatures as defined in § 25-101(32A) at all hours on any day of the week.

(b) Except as provided in § 25-724 and subsections (c), (d), and (e) of this section, the licensee under a [sic] on-premises retailer’s license or a temporary license may sell or serve alcoholic beverages on any day and at any time except between the following hours:

(1) 2:00 a.m. and 8:00 a.m., Monday through Friday, excluding District and federal holidays; and

(2) 3:00 a.m. and 8:00 a.m. on Saturday and Sunday, excluding District and federal holidays.

(c)(1) Except as provided in § 25-724, the licensee under an on-premises retailer's license or a temporary license may sell or serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day during the following times:

(A) On a District or federal holiday;

(B) The Saturday and Sunday preceding Memorial Day and Labor Day, as set forth in § 1-612.02(a); and

(C) The Saturday and Sunday adjacent to January 1 (New Year's Day) and July 4 (Independence Day); except, that if the holiday under this subparagraph occurs on a Tuesday, Wednesday, or Thursday, this subparagraph shall not apply.

(2) A licensee operating under an on-premises retailer's license shall not be required to obtain Board approval to sell or serve alcoholic beverages and operate in accordance with paragraph (1) of this subsection.

(3) This subsection shall not apply during Inaugural Week, as defined in subsection (e) of this section.

(4) Once each calendar year and no fewer than 30 days before the first holiday on which a licensee seeks to extend its hours of operation pursuant to this subsection, the licensee shall provide written notification and a public safety plan to the Board and the Metropolitan Police Department of its intent to extend its hours of operation.

(d) [Expired].

(e)(1) Every 4 years, beginning in 2013, the week of January 15 through January 21, shall be designated "Inaugural Week." Except as provided in § 25-724, during Inaugural Week, a licensee under an on-premises retailer's license or a temporary license may sell or serve alcoholic beverages until 4 a.m. and operate 24 hours a day if the licensee:

(A) Provides written notification and a public safety plan, no later than January 7, to the Board and the Metropolitan Police Department of its hours of operation; and

(B) Pays the following fee for each day it will serve alcohol pursuant to this subsection:

(i) \$250 for a CN licensee;

(ii) \$100 for a CR or CT licensee; and

(iii) \$50 for any other licensee.

(2) A licensee operating under an on-premises retailer's license shall not be required to obtain Board approval to sell or serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day during Inaugural Week.

(f)(1) During the beginning of daylight saving time under § 28-2711, on the 2nd Sunday of March of each year, a licensee under an on-premises retailer's license may sell and serve alcoholic beverages between 3:00 a.m. and 4:00 a.m.

(2) A licensee operating under an on-premises retailer's license shall not be required to obtain Board approval to sell or serve alcoholic beverages in accordance with paragraph (1) of this subsection.

(3) This subsection shall apply as of October 1, 2013.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 25, 2009, D.C. Law 17-361, § 2(c)(1), 56 DCR 1204; Sept. 14, 2011, D.C. Law 19-21, § 8142, 58

DCR 6226; Dec. 2, 2011, D.C. Law 19-45, § 2, 58 DCR 8937; Sept. 20, 2012, D.C. Law 19-168, § 2042(a), 59 DCR 8025; May 1, 2013, D.C. Law 19-310, § 2(z), 60 DCR 3410.)

Section references. — This section is referenced in § 25-725 and § 25-827.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 substituted “miniatures as defined in § 25-101(32A)” for “closed miniature containers of alcoholic beverages” in (a); added (d)(4), which stated “This subsection shall expire on September 30, 2013”; and added (f).

Legislative history of Law 19-310. — See note to § 25-101.

Editor’s notes.

Former subsection (d) of this section, concerning sales and service of alcoholic beverages on the second Sunday in March between 3:00 a.m. and 4:00 a.m., provided by its own terms that it would expire September 30, 2013.

§ 25-724. Board authorized to further restrict hours of operation.

At the time of initial application or renewal of any class of license, the Board may further limit the hours of sale and delivery for a particular applicant (1) based on the Board’s findings of fact, conclusions of law, and order following a protest hearing, or (2) under the terms of a settlement agreement.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(aa), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123 and § 25-723.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 substituted

“settlement agreement” for “voluntary agreement”.

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-725. Noise from licensed premises.

(a) The licensee under an on-premises retailer’s license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any:

- (1) Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise;
- (2) Bell, horn, gong, whistle, drum, or other noise-making article, instrument, or device; or
- (3) Musical instrument.

(b) This section shall not apply to:

- (1) Areas in the building which are not part of the licensed establishment;
- (2) A building owned by the licensee which abuts the licensed establishment;
- (3) Any premises other than the licensed establishment which are located within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District;
- (4) Sounds, noises, or music occasioned by normal opening of entrance and exit doors for the purpose of ingress and egress; or
- (5) Heating, ventilation, and air conditioning devices.

(c) The licensees under this subchapter shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations.

(d)(1) ABRA shall maintain a complaint program to receive noise complaints by phone, email, and fax. The complaint program shall be staffed by an ABRA employee until at least one hour after the end time for the legal sale of alcoholic beverages as set forth in § 25-723.

(2) ABRA shall keep records regarding noise complaints and record the following information at the time the complaint is made:

(A) The time and date of the complaint;

(B) The name and address of the establishment that is the subject of the complaint;

(C) The name and address of the complainant, if available;

(D) The nature of the noise complaint; and

(E) Whether the complaint was substantiated by ABRA.

(3) Upon receipt of a noise complaint, ABRA shall attempt to contact the establishment by phone or in person and inform the ABC manager on-duty that a noise complaint has been received and describe the nature of the complaint.

(4) ABRA shall notify the licensee of the complaint by e-mail, phone, or registered mail within 72 hours of receiving the complaint. ABRA shall notify the licensee of the results of any investigation that may result in a show cause hearing within 90 days as required by § 25-832.

(e) The windows and doors of an establishment from which noise can be heard shall remain open or closed, as they were at the time the complaint was made, in order for an ABRA investigator or Metropolitan Police Department officer to determine whether a violation of subsection (a) of this section exists. The ABRA investigator shall have the authority to direct that windows and doors be closed or opened.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(bb), 60 DCR 3410.)

Section references. — This section is referenced in § 25-123 and § 25-313.

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (b)(5), (d) and (e); and made related changes.

Legislative history of Law 19-310. — See note to § 25-101.

Subchapter VII. Physical Space and Advertising.

§ 25-763. Restrictions on use of signs.

Editor's notes. — Section 6 of D.C. Law 19-289 would have rewritten (f) to read as follows: "In addition to the provisions of this section, signage shall be subject to § 1-303.21, and any rules issued pursuant to that section."

Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a

law replaced by this act shall remain in effect until repealed, amended, or superseded.

Applicability of D.C. Law 19-289, § 6: Section 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public

space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

Subchapter VIII. Reporting; Importation.

§ 25-772. Unlawful importation of beverages.

(a) Only a licensee under a manufacturer's, wholesaler's, or common carrier's license, or retailer's license under a validly issued import permit shall transport, import, bring, or ship or cause to be transported, imported, brought, or shipped into the District from outside the District any wines, spirits, or beer in a quantity in excess of one case at any one time.

(b) No public or common carrier shall transport or bring into the District wine, spirits, or beer in a quantity in excess of one case per location in any one calendar month for delivery to any one person in the District other than the licensee under a manufacturer's, wholesaler's, or retailer's license.

(c) This section shall not apply to persons possessing old stocks who are moving into the District, to embassies or diplomatic representatives of foreign countries, to wines imported for religious or sacramental purposes, to wine, spirits, and beer to be delivered to the licensee under a manufacturer's, wholesaler's, or retailer's license, or to any persons wishing to have liquor chocolates delivered to their residence. The term "liquor chocolates" may include other types of candies that have small amounts of liquor contained in the candy.

(d) The penalty for violation of this section shall consist of (1) the forfeiture of the beverages transported, imported, brought, or shipped, or caused to be transported, imported, brought, or shipped in violation of this section, and (2) a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than 6 months.

(e) In addition to other penalties provided in this section, any person who violates the provisions of this section shall be liable for any tax, penalties, and interest provided for in this title.

(Jan. 24, 1934, ch. 4, § 39; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 4; Dec. 26, 1967, 81 Stat. 728, Pub. L. 90-223, § 1; July 24, 1982, D.C. Law 4-131, § 302, 29 DCR 2418; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Sept. 30, 2004, D.C. Law 15-187, § 101(cc), 51 DCR 6525; July 18, 2008, D.C. Law 17-201, § 5(d), 55 DCR 6289; June 11, 2013, D.C. Law 19-317, § 284(b), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "of not more than the amount set forth in [§ 22-3571.01]" for "of not more than \$500" in (d).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IX. Minors and Intoxicated Persons.

§ 25-783. Production of valid identification document required; penalty.

(a) A licensee shall refuse to sell, serve, or deliver an alcoholic beverage to any person who, upon request of the licensee, fails to produce a valid identification document.

(b) A licensee or his agent or employee shall take steps reasonably necessary to ascertain whether any person to whom the licensee sells, delivers, or serves an alcoholic beverage is of legal drinking age. Any person who supplies a valid identification document showing his or her age to be the legal drinking age shall be deemed to be of legal drinking age.

(c) Upon finding that a licensee has violated subsection (a) or (b) of this section in the preceding 2 years:

(1) Upon the first violation, the Board shall fine the licensee not less than \$1,000, and not more than \$2,000, and suspend the licensee for 5 consecutive days. The 5-day suspension may be stayed by the Board for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(2) Upon the second violation, the Board shall fine the licensee not less than \$2,000, and not more than \$4,000, and suspend the licensee for 10 consecutive days. The Board may stay up to 6 days of the 10-day suspension for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(3) Upon the third violation, the Board shall fine the licensee not less than \$4,000, and not more than \$10,000, and suspend the licensee for 15 consecutive days, or revoke the license. The Board may stay up to 5 days of the 15-day suspension for one year if all employees who serve alcoholic beverages in the licensed establishment complete an alcohol training program within 3 months.

(4) Upon the fourth violation, the Board may revoke the license.

(5) The Board may revoke the license of a licensed establishment that has 5 or more violations of this section within a 5-year period.

(d) The provisions of this section notwithstanding, no licensee shall discriminate on any basis prohibited by Unit A of Chapter 14 of Title 2.

(e) An affirmative defense to a violation of subsection (a) of this section shall be that the person was at the time of the violation 21 years of age or older.

(Jan. 24, 1934, 48 Stat. 331, ch. 4, § 20; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 10; June 29, 1953, 67 Stat. 104, ch. 159, § 404(g); Sept. 29, 1982, D.C. Law 4-157, § 12, 29 DCR 3617; Sept. 26, 1984, D.C. Law 5-106, § 2, 31 DCR 3381; Feb. 24, 1987, D.C. Law 6-178, § 2(a), 33 DCR 7654; Mar. 7, 1987, D.C. Law 6-217, § 12, 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(c), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(i), 41 DCR 1658; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; May 1, 2013, D.C. Law 19-310, § 2(cc), 60 DCR 3410.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-310 added (e).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-785. Delivery, offer, or otherwise making available to persons under 21; penalties.

(a) A person who is not a licensee shall not, within the District, purchase an alcoholic beverage for the purpose of delivering the alcoholic beverage to a person who is under 21 years of age.

(b) A person who is a licensee shall not, within the District, offer, give, provide, or otherwise make available an alcoholic beverage to a person who is under 21 years of age, except if necessary to allow the person to perform lawful employment responsibilities that require the person to have temporary possession of alcoholic beverages.

(c) A person who violates any provision of this section shall:

(1) Upon conviction for the first offense, be fined not more than [than] \$1,000, or imprisoned up to 180 days, or both;

(2) Upon conviction for the second offense committed within 2 years from the date of any such previous offense, be fined not more than \$2,500, or imprisoned up to 180 days, or both;

(3) Upon conviction for the third or any subsequent offense committed within 2 years from the date of any such previous offense, be fined not more than \$5,000, or imprisoned up to one year, or both.

(d) A person alleged to have violated this section may be issued a citation under § 23-1110(b)(1). The person shall not be eligible to forfeit collateral.

(e) The fines set forth in this section shall not be limited by [§ 22-3571.01].

(Jan. 24, 1934, ch. 4, § 30a, as added May 24, 1994, D.C. Law 10-122, § 2(k), 41 DCR 1658; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 113(c), 60 DCR 2064.)

Section references. — This section is referenced in § 7-403.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (e).

Legislative history of Law 19-317. — See note to § 25-772.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter X. Temporary Surrender of License — Safekeeping.

§ 25-791. Temporary surrender of license — Safekeeping.

(a) A license which is discontinued for any reason shall be surrendered by the licensee to the Board for safekeeping. The Board shall hold the license until the licensee resumes business at the licensed establishment or the license is transferred to a new owner. If the licensee has not initiated proceedings to resume operations or transfer the license within 60 days after suspension, the Board may deem this license abandoned after giving notice to the licensee. The licensee has 14 days to respond to the Board's notice to request continued safekeeping.

(b) The Board may extend the period of safekeeping beyond 60 days for reasonable cause, such as fire, flood, other natural disaster; rebuilding or reconstruction; or to complete the sale of the establishment.

(c) Licenses in safekeeping beyond 60 days, as extended by the Board, shall be reviewed by the Board every 6 months to ensure that the licensee is making reasonable progress on returning to operation.

(c-1)(1) Except as proved by paragraph (3) of this subsection, the Board shall assess licenses in safekeeping a fee of 25% of the annual license fee for every 6 months that the license remains in safekeeping. The initial 6-month fee shall be paid by the licensee at the time the license is placed in safekeeping. Each additional 6-month safekeeping fee shall be paid in advance by the licensee.

(2) After 4 consecutive 6-month periods of safekeeping, the safekeeping fee shall be 50% of the annual license fee for every 6 months that the license remains in safekeeping.

(3) The safekeeping fee required by this subsection shall not apply to a licensee serving a suspension.

(d) This section shall not relieve a licensee from the responsibility for renewing the license upon its expiration.

(e) If a licensee notifies the Board that the licensee has ceased to do business under the license or if the Board cancels the license under this section, the license shall be marked as "canceled."

(f) Licenses which are restored after being held in safekeeping for longer than 2 years shall be subject to the license renewal process set forth in Chapter 4.

(g) A license suspended by the Board under this title shall be stored at the Board.

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 13, 2004, D.C. Law 15-105, § 104(a), 51 DCR 881; May 1, 2013, D.C. Law 19-310, § 2(dd), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 added (c-1).

Legislative history of Law 19-310. — See

note to § 25-101.

CHAPTER 8. ENFORCEMENT, INFRACTIONS, AND PENALTIES.

Subchapter II. Revocation, Suspension, and Civil Penalties

Sec.

25-823. Prompt notice of investigative reports.

25-826. Summary revocation or suspension.

Sec.

25-830. Civil penalties.

25-831. Penalty for violation where no specific penalty provided; additional penalty for failure to perform certain required acts.

*Subchapter II. Revocation, Suspension, and Civil Penalties.***§ 25-823. Prompt notice of investigative reports.**

The Board may fine, as set forth in the schedule of civil penalties established under § 25-830, and suspend, or revoke the license of any licensee during the license period if:

(1) The licensee violates any of the provisions of this title, the regulations promulgated under this title, or any other laws of the District, including the District's curfew law;

(2) The licensee allows the licensed establishment to be used for any unlawful or disorderly purpose;

(3) The licensee fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued;

(4) The licensee allows its employees or agents to engage in prostitution, as defined under § 22-2701.01(1) [now § 22-2701.01(3)], or engage in sexual acts or sexual contact, as defined under § 22-3001, at the licensed establishment;

(5) The licensee fails or refuses to allow an ABRA investigator, a designated agent of ABRA, or a member of the Metropolitan Police Department to enter or inspect without delay the licensed premises or examine the books and records of the business, or otherwise interferes with an investigation; or

(6) The licensee fails to follow its settlement agreement, security plan, or Board order.

(Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 13, 2004, D.C. Law 15-105, § 4, 51 DCR 881; Sept. 30, 2004, D.C. Law 15-187, § 101(ee), 51 DCR 6525; July 18, 2008, D.C. Law 17-201, § 6(a), 55 DCR 6289; Mar. 25, 2009, D.C. Law 17-361, § 2(d)(2), 56 DCR 1204; May 1, 2013, D.C. Law 19-310, § 2(ee), 60 DCR 3410.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 substituted "settlement agreement" for "voluntary agreement" in (6).

Legislative history of Law 19-310. — See

note to § 25-101.

CASE NOTES**Sufficiency of evidence.**

District of Columbia Alcoholic Beverage Control Board's (Board) order imposing a fine and suspending a liquor license was not supported by substantial evidence as standing alone, evidence of a single instance in which a member of the security staff became physical with a pa-

tron and another where the owner retained an employee who allegedly assaulted two patrons failed to establish the owner's adoption of a method of operation that encouraged, caused, or contributed to the disorderly conduct; the evidence could not sustain one D.C. Code § 25-823(2) violation, let alone the two found by the

Board. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

District of Columbia Alcoholic Beverage Control Board's order imposing a fine and suspending a liquor license was not supported by substantial evidence as the owner did not violate D.C. Code § 25-823(6) where although a security officer failed to summons a manager when two patrons failed to follow his commands and failed to eject a woman who was acting aggressively towards the two patrons, and another officer lacked familiarity with the security plan, there was not a pattern of operation that encouraged deviations from the club's security

plan. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

District of Columbia Alcoholic Beverage Control Board's order imposing a fine and suspending a liquor license was not supported by substantial evidence as the owner's mere failure to timely respond to an investigator did not amount to a failure or refusal to allow the investigator to examine the books and records in violation of D.C. Code § 25-823(5), especially as the owner could not retrieve the video footage because it no longer existed. 1900 M Rest. Ass'ns, Inc. v. D.C. Alcoholic Bev. Control Bd., 56 A.3d 486, 2012 D.C. App. LEXIS 591 (2012).

§ 25-826. Summary revocation or suspension.

(a) If the Board determines, after investigation, that the operations of a licensee present an imminent danger to the health and safety of the public, the Board may summarily revoke, suspend, fine, or restrict, without a hearing, the license to sell alcoholic beverages in the District.

(b) The Board, after investigation, may summarily revoke, suspend, fine, or restrict the license of a licensee whose establishment has been the scene of an assault on a police officer, government inspector or investigator, or other governmental official, who was acting in his or her official capacity, when such assault occurred by patrons who were within 1,000 feet of the establishment.

(c) A licensee may request a hearing within 72 hours after service of notice of the summary revocation, suspension, fine, or restriction of a license. The Board shall hold a hearing within 48 hours of receipt of a timely request and shall issue a decision within 72 hours after the hearing.

(d) A person aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.

(Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, 84 Stat. 1393, Pub. L. 91-535, § 3(a); Sept. 29, 1982, D.C. Law 4-157, §§ 9, 15, 29 DCR 3617; Mar. 8, 1984, D.C. Law 5-51, § 2(b)(5), 30 DCR 5927; Mar. 7, 1987, D.C. Law 6-217, § 11; 34 DCR 907; Sept. 11, 1993, D.C. Law 10-12, § 2(b), 40 DCR 4020; May 24, 1994, D.C. Law 10-122, § 2(h), 41 DCR 1658; Apr. 30, 1998, D.C. Law 12-97, § 2, 45 DCR 1517; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; July 18, 2008, D.C. Law 17-201, § 6(b), 55 DCR 6289; May 1, 2013, D.C. Law 19-310, § 2(ff), 60 DCR 3410.)

Section references. — This section is referenced in § 25-821 and § 25-827.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310

inserted “after investigation” following “The Board” in (b).

Legislative history of Law 19-310. — See note to § 25-101.

§ 25-830. Civil penalties.

(a) Within 90 days after May 3, 2001, the Board shall submit proposed regulations setting forth a schedule of civil penalties ("schedule") for violations of this title to the Council for a 60-day period of review, including Saturdays, Sundays, holidays, and periods of Council recess. If the Council does not approve, in whole or in part, the proposed regulations by resolution with the 60-day review period, the regulations shall be deemed disapproved. The schedule shall replace all civil penalties, except as expressly provided in this title.

(b) The schedule shall be prepared in accordance with the following provisions:

(1) The schedule shall contain 2 tiers that reflect the severity of the violation for which the penalty is imposed:

(A) The primary tier shall apply to more severe violations, including service to minors or violation of hours of sale or service of alcoholic beverages.

(B) The secondary tier shall apply to less severe violations, including the failure to post required signs.

(2) A subsequent violation in the same tier, whether a violation of the same provision or different one, shall be treated as a repeat violation for the purposes of imposing an increased penalty; provided, that all secondary tier infractions cited by ABRA investigators or Metropolitan Police Department Officers, during a single investigation or inspection on a single day, shall be deemed to be one secondary tier violation for the purposes of determining repeat violations under this section.

(c)(1) For primary tier violations, the penalties shall be no less than the following:

(A) For the first violation, no less than \$1,000;

(B) For the second violation within 2 years, no less than \$2,000; and

(C) For the third violation within 3 years, no less than \$4,000;

(2) A licensee who has been found in violation of no more than 3 secondary tier violations and who is subsequently found in violation of a primary tier violation shall be penalized according to a first primary tier violation.

(3) A licensee found in violation of a primary tier offense for the 4th time within 4 years shall have the license either revoked or fined no less than \$30,000 and suspended for 30 consecutive days.

(4) A licensee found in violation of a primary tier offense for the 5th time within 4 years shall have the license revoked.

(d)(1) For secondary tier violations, the penalties shall be no less than the following:

(A) For the first violation, no less than \$250.

(B) For the second violation within 2 years, no less than \$500.

(C) For the third violation within 3 years, no less than \$750.

(2) A licensee found in violation of a secondary tier violation for the fourth time within 4 years shall be penalized according to a first primary tier violation. Every subsequent secondary tier offense within 5 years of the first violation shall be fined according to the schedule for primary tier violations.

(e)(1) Except for an egregious violation as may be later defined by ABC rulemaking, no licensee shall be found to be in violation of a first-time violation

of § 25-781 (sales to minors), unless the licensee has been given a written warning, or received a citation, for the violation, or had an enforcement proceeding before the Board, during the 4 years preceding the violation.

(2) A warning for a first-time violation of § 25-781 shall include a description of the violation. The Alcoholic Beverage Regulation Administration shall make available a schedule of fines that could be imposed upon subsequent violation. Within one year of [March 25, 2009], the Board shall submit a report on the status of the warning requirement for § 25-781 violations, including a statement on repeat offenders and subsequent fines or sanctions imposed. The provisions of paragraph (1) of this subsection, and the provisions of § 25-781(f) shall expire one year from [March 25, 2009], unless the Board finds each of the following:

(A) That the warning requirement was effective in correcting behavior that was the subject of the warning for those licensees; and

(B) That the warning requirement contributed to the overall prevention of sales to minors in the District of Columbia.

(3)(A) Within 60 days of [March 25, 2009], the Board shall issue proposed regulations for a comprehensive warning and violation structure, which shall include recommendations on which violations of the act or regulations shall require a warning for a first-time violation prior to penalty.

(B) Proposed rules under this subsection shall be submitted to the Council for a 30-day period of review. The Council may approve these proposed regulations, in whole or in part, by resolution. If the Council has not approved the regulations upon expiration of the 30-day review period, the regulations shall be deemed disapproved.

(f) The Board or the Council may amend the schedule. An amendment by the Board shall be submitted to the Council for its approval in accordance with subsection (a) of this section. The Board may fine for a violation not listed on the schedule consistent with the primary tier violation penalties set forth in subsection (c)(1) of this section.

(g) The schedule and any amendments to the schedule shall be published in the District of Columbia Register and promulgated by the procedure adopted under § 25-211(e).

(h) Penalties or fines assessed under this chapter shall be credited to the General Fund of the District of Columbia.

(i) It shall be a primary tier violation for a licensee to sell or serve alcohol on a suspended or expired license or a license held in safekeeping.

(j) It shall be a primary tier violation for a licensee to fail to comply with either of the statutory food requirements in § 25-113(b)(3)(B).

(May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 25, 2009, D.C. Law 17-361, § 2(d)(3), 56 DCR 1204; May 1, 2013, D.C. Law 19-310, § 2(gg), 60 DCR 3410.)

Section references. — This section is referenced in § 25-113, § 25-797, § 25-801, and § 25-823.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310

rewrote (c)(3), which read “A licensee found in violation of a primary tier offense for the fourth time within 4 years shall have the license revoked”; added (c)(4); and added (i) and (j).

Legislative history of Law 19-310. — See

note to § 25-101.

§ 25-831. Penalty for violation where no specific penalty provided; additional penalty for failure to perform certain required acts.

(a) A person who violates any of the provisions of this title, or regulations under this title, for which no specific penalty is provided shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than one year, or both.

(b) Any person required to file a return or report or perform any act under the provisions of this title who wilfully fails or refuses to file the return or report or perform the act within the time required shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 3 years, or both. The penalty provided herein shall be in addition to other penalties provided by this title.

(c) Violations of this section which are misdemeanors shall be prosecuted on information filed in the Superior Court of the District of Columbia by the Corporation Counsel. Violations of this subsection which are felonies shall be prosecuted by the United States Attorney for the District of Columbia.

(d) A civil fine may be imposed as an alternative sanction for any violation of this title for which no specific penalty is provided, or any rules or regulations issued under the authority of this title, under Chapter 18 of Title 2. Adjudication of an infraction of this chapter shall be under Chapter 18 of Title 2.

(Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); July 24, 1982, D.C. Law 4-131, § 301, 29 DCR 2418; Sept. 26, 1984, D.C. Law 5-106, § 3, 31 DCR 3381; Oct. 5, 1985, D.C. Law 6-42, § 455(b), 32 DCR 4450; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (a), and for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 10. LIMITATIONS ON CONSUMERS.

Sec.	Sec.
25-1001. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited.	25-1007. Prohibition on use of watercraft under certain conditions — Penalties. [Repealed].
25-1004. Prohibition on use of watercraft under certain conditions. [Repealed].	25-1008. Prima facie evidence of intoxication. [Repealed].
25-1005. Prohibition on use of watercraft under certain conditions — consent to testing. [Repealed].	25-1009. Operation of locomotive, streetcar, elevator, or horse-drawn vehicle by intoxicated person prohibited. [Repealed].
25-1006. Prohibition on use of watercraft under certain conditions — Preliminary testing; admissibility of test results. [Repealed].	

§ 25-1001. Drinking of alcoholic beverage in public place prohibited; intoxication prohibited.

(a) Except as provided in subsections (b) and (c) of this section, no person in the District shall drink an alcoholic beverage or possess in an open container an alcoholic beverage in or upon any of the following places:

- (1) A street, alley, park, sidewalk, or parking area;
- (2) A vehicle in or upon any street, alley, park, or parking area;
- (3) A premises not licensed under this title where food or nonalcoholic beverages are sold or entertainment is provided for compensation;
- (4) Any place to which the public is invited and for which a license to sell alcoholic beverages has not been issued under this title;
- (5) Any place to which the public is invited for which a license to sell alcoholic beverages has been issued under this title at a time when the sale of alcoholic beverages on the premises is prohibited by this title or by the regulations promulgated under this title; or

(6) Any place licensed under a club license at a time when the consumption of the alcoholic beverages on the premises is prohibited by this title or by regulations promulgated under this title.

(b) Subsection (a)(1) of this section shall not apply if drinking or possession of an alcoholic beverage occurs:

- (1) In or on a structure which projects upon the parking, and which is an integral, structural part, of a private residence, such as a front porch, terrace, bay window, or vault; and
- (2) By, or with the permission of, the owner or resident.

(c) No person, whether in or on public or private property, shall be intoxicated and endanger the safety of himself, herself, or any other person or property.

(d) Any person violating the provisions of subsection (a) or (c) of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 90 days, or both.

(e) Any person in the District who is intoxicated in public and who is not conducting himself or herself in such manner as to endanger the safety of

himself, herself, or of any other person or of property shall be treated in accordance with Chapter 6 of Title 24.

(Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, 82 Stat. 618, Pub. L. 90-452, § 2(a); Sept. 29, 1982, D.C. Law 4-157, § 13, 29 DCR 3617; Dec. 3, 1985, D.C. Law 6-64, § 2, 32 DCR 5970; Mar. 26, 1999, D.C. Law 12-206, § 2(b), 45 DCR 8430; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; June 11, 2013, D.C. Law 19-317, § 284(d), 60 DCR 2064.)

Section references. — This section is referenced in § 24-604.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500” in (d).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 25-1004. Prohibition on use of watercraft under certain conditions. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, §§ 2, 7, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Mar. 2, 2007, D.C. Law 16-195, § 3(a), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — Law 19-266, the “Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the

Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Editor’s notes. — For present law, see § 50-1908 et seq.

§ 25-1005. Prohibition on use of watercraft under certain conditions — consent to testing. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, §§ 3, 7, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 25-1004.

Editor’s notes. — For present law, see § 50-1908 et seq.

§ 25-1006. Prohibition on use of watercraft under certain conditions — Preliminary testing; admissibility of test results. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 4, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 25-1004. **Editor's notes.** — For present law, see § 50-1908 et seq.

§ 25-1007. Prohibition on use of watercraft under certain conditions — Penalties. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 5, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 25-1004. **Editor's notes.** — For present law, see § 50-1908 et seq.

§ 25-1008. Prima facie evidence of intoxication. [Repealed].

Repealed.

(Apr. 9, 1997, D.C. Law 11-248, § 6, 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(h), 48 DCR 7612; Mar. 2, 2007, D.C. Law 16-195, § 3(b), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 25-1004. **Editor's notes.** — For present law, see § 50-1908 et seq.

§ 25-1009. Operation of locomotive, streetcar, elevator, or horse-drawn vehicle by intoxicated person prohibited. [Repealed].

Repealed.

(Jan. 24, 1934, 48 Stat. 333, ch. 4, § 27; Oct. 5, 1985, D.C. Law 6-42, § 455(a), 32 DCR 4450; Apr. 9, 1997, D.C. Law 11-248, § 8(a), 44 DCR 1242; May 3, 2001, D.C. Law 13-298, § 101, 48 DCR 2959; Oct. 26, 2001, D.C. Law 14-42, § 6(i), 48 DCR 7612; Apr. 27, 2013, D.C. Law 19-266, § 302, 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 25-1004. **Editor's notes.** — For present law, see §§ 50-1901, 50-2201.02, and 50-2206.01.

TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

SUBTITLE I. UNIFORM COMMERCIAL CODE

Article

1. General Provisions
2. Sales
- 2A. Leases
3. Negotiable Instruments
4. Bank Deposits and Collections
- 4A. Funds Transfers
5. Letters of Credit
7. Documents of Title
8. Investment Securities
9. Secured Transactions

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS

Chapter

23. Assignment of Choses in Action
33. Interest and Usury
38. Consumer Protections
39. Consumer Protection Procedures
45. Restraints of Trade
46. Consumer Credit Service Organizations
49. Uniform Electronic Transactions
52. Unit Pricing Requirements

SUBTITLE I. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

Part 1. General Provisions.

Sec.	Sec.
28:1-101. Short titles.	28:1-201. General definitions.
28:1-102. Scope of article.	28:1-202. Notice; knowledge.
28:1-103. Construction of subtitle to promote its purposes and policies; applicability of supplemental principles of law.	28:1-203. Lease distinguished from security interest.
28:1-104. Construction against implied repeal.	28:1-204. Value.
28:1-105. Severability.	28:1-205. Reasonable time; seasonableness.
28:1-106. Use of singular and plural; gender.	28:1-206. Presumptions.
28:1-107. Section captions.	28:1-301. Territorial applicability; parties' power to choose applicable law.
28:1-108. Relation to Electronic Signatures in Global and National Commerce Act.	28:1-302. Variation by agreement.
	28:1-303. Course of performance, course of dealing, and usage of trade.
	28:1-304. Obligation of good faith.
	28:1-305. Remedies to be liberally administered.

Sec.

28:1-306. Waiver or renunciation of claim or right after breach.

28:1-307. Prima facie evidence by third-party documents.

Sec.

28:1-308. Performance or acceptance under reservation of rights.

28:1-309. Option to accelerate at will.

28:1-310. Subordinated obligations.

Part 1. General Provisions.

§ 28:1-101. Short titles.

(a) This subtitle may be cited as the “Uniform Commercial Code”.

(b) This article may be cited as the “Uniform Commercial Code — General Provisions”.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 34-2202.09 and § 42-2704.02.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Editor’s notes.

D.C. Law 19-300 amended this article in its

entirety, substituting present §§ 28:1-101 through 28:1-310 for former §§ 28:1-101 through 28:1-208. Although similar in many respects to former Article 1, the statute sections in the revised Article are sufficiently different that a detailed explanation of the changes was impracticable; however, where possible, the historical citations from the former sections have been transferred to the new, similar sections. Where appropriate, annotations to former sections have also been retained under corresponding sections in the amended article.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-101.

Changes from former law: Subsection (b) is new. It is added in order to make the structure of Article 1 parallel with that of the other articles of the Uniform Commercial Code.

1. Each other article of the Uniform Commercial Code (except Articles 10 and 11) may also be cited by its own short title. See Sections 2-101, 2A-101, 3-101, 4-101, 4A-101, 5-101, 6-101, 7-101, 8-101, and 9-101.

§ 28:1-102. Scope of article.

This article applies to a transaction to the extent that it is governed by another article of this subtitle.

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-519.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: New.

1. This section is intended to resolve confusion that has occasionally arisen as to the applicability of the substantive rules in this article. This section makes clear what has al-

ways been the case — the rules in Article 1 apply to transactions to the extent that those transactions are governed by one of the other articles of the Uniform Commercial Code. See also Comment 1 to Section 1-301.

§ 28:1-103. Construction of subtitle to promote its purposes and policies; applicability of supplemental principles of law.

(a) This subtitle must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To simplify, clarify, and modernize the law governing commercial transactions;

(2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this subtitle, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause, supplement its provisions.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; July 22, 1976, D.C. Law 1-75, § 6, 23 DCR 1183; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., §§ 28:1-102(1), (2), 28:1-103.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-102 (1)-(2); Former Section 1-103.

Changes from former law: This section is derived from subsections (1) and (2) of former Section 1-102 and from former Section 1-103. Subsection (a) of this section combines subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, its language is the same as subsections (1) and (2) of former Section 1-102. Except for changing the form of reference to the Uniform Commercial Code and minor stylistic changes, subsection (b) of this section is identical to former Section 1-103. The provisions have been combined in this section to reflect the interrelationship between them.

1. The Uniform Commercial Code is drawn to provide flexibility so that, since it is intended to be a semi-permanent and infrequently-amended piece of legislation, it will provide its own machinery for expansion of commercial practices. It is intended to make it possible for the law embodied in the Uniform Commercial Code to be applied by the courts in the light of unforeseen and new circumstances and practices. The proper construction of the Uniform Commercial Code requires, of course, that its interpretation and application be limited to its reason.

Even prior to the enactment of the Uniform

Commercial Code, courts were careful to keep broad acts from being hampered in their effects by later acts of limited scope. See *Pacific Wool Growers v. Draper & Co.*, 158 Or. 1, 73 P.2d 1391 (1937), and compare Section 1-104. The courts have often recognized that the policies embodied in an act are applicable in reason to subject-matter that was not expressly included in the language of the act, *Commercial Nat. Bank of New Orleans v. Canal-Louisiana Bank & Trust Co.*, 239 U.S. 520, 36 S.Ct. 194, 60 L.Ed. 417 (1916) (bona fide purchase policy of Uniform Warehouse Receipts Act extended to case not covered but of equivalent nature), and did the same where reason and policy so required, even where the subject-matter had been intentionally excluded from the act in general. *Agar v. Orda*, 264 N.Y. 248, 190 N.E. 479 (1934) (Uniform Sales Act change in seller's remedies applied to contract for sale of choses in action even though the general coverage of that Act was intentionally limited to goods "other than things in action.") They implemented a statutory policy with liberal and useful remedies not provided in the statutory text. They disregarded a statutory limitation of remedy where the reason of the limitation did not apply. *Fiterman v. J. N. Johnson & Co.*, 156 Minn. 201, 194 N.W. 399 (1923) (requirement of return of the goods as a condition to rescission for breach of warranty; also, partial rescission al-

lowed). Nothing in the Uniform Commercial Code stands in the way of the continuance of such action by the courts.

The Uniform Commercial Code should be construed in accordance with its underlying purposes and policies. The text of each section should be read in the light of the purpose and policy of the rule or principle in question, as also of the Uniform Commercial Code as a whole, and the application of the language should be construed narrowly or broadly, as the case may be, in conformity with the purposes and policies involved.

2. Applicability of supplemental principles of law. Subsection (b) states the basic relationship of the Uniform Commercial Code to supplemental bodies of law. The Uniform Commercial Code was drafted against the backdrop of existing bodies of law, including the common law and equity, and relies on those bodies of law to supplement its provisions in many important ways. At the same time, the Uniform Commercial Code is the primary source of commercial law rules in areas that it governs, and its rules represent choices made by its drafters and the enacting legislatures about the appropriate policies to be furthered in the transactions it covers. Therefore, while principles of common law and equity may *supplement* provisions of the Uniform Commercial Code, they may not be used to *supplant* its provisions, or the purposes and policies those provisions reflect, unless a specific provision of the Uniform Commercial Code provides otherwise. In the absence of such a provision, the Uniform Commercial Code preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

The language of subsection (b) is intended to reflect both the concept of supplementation and the concept of preemption. Some courts, however, had difficulty in applying the identical language of former Section 1-103 to determine when other law appropriately may be applied to supplement the Uniform Commercial Code, and when that law has been displaced by the Code. Some decisions applied other law in situations in which that application, while not inconsistent with the text of any particular provision of the Uniform Commercial Code, clearly was inconsistent with the underlying purposes and policies reflected in the relevant provisions of the Code. *See, e.g., Sheerbonnet, Ltd. v. American Express Bank, Ltd.*, 951 F. Supp. 403 (S.D.N.Y. 1995). In part, this difficulty arose from Comment 1 to former Section 1-103, which stated that "this section indicates the continued applicability to commercial contracts of all supplemental bodies of law except insofar as they are explicitly displaced by this Act." The "explicitly displaced" language of that Comment did not accurately reflect the proper scope of Uniform Commercial Code preemp-

tion, which extends to displacement of other law that is inconsistent with the purposes and policies of the Uniform Commercial Code, as well as with its text.

3. Application of subsection (b) to statutes. The primary focus of Section 1-103 is on the relationship between the Uniform Commercial Code and principles of common law and equity as developed by the courts. State law, however, increasingly is statutory. Not only are there a growing number of state statutes addressing specific issues that come within the scope of the Uniform Commercial Code, but in some States many general principles of common law and equity have been codified. When the other law relating to a matter within the scope of the Uniform Commercial Code is a statute, the principles of subsection (b) remain relevant to the court's analysis of the relationship between that statute and the Uniform Commercial Code, but other principles of statutory interpretation that specifically address the interrelationship between statutes will be relevant as well. In some situations, the principles of subsection (b) still will be determinative. For example, the mere fact that an equitable principle is stated in statutory form rather than in judicial decisions should not change the court's analysis of whether the principle can be used to supplement the Uniform Commercial Code — under subsection (b), equitable principles may supplement provisions of the Uniform Commercial Code only if they are consistent with the purposes and policies of the Uniform Commercial Code as well as its text. In other situations, however, other interpretive principles addressing the interrelationship between statutes may lead the court to conclude that the other statute is controlling, even though it conflicts with the Uniform Commercial Code. This, for example, would be the result in a situation where the other statute was specifically intended to provide additional protection to a class of individuals engaging in transactions covered by the Uniform Commercial Code.

4. Listing not exclusive. The list of sources of supplemental law in subsection (b) is intended to be merely illustrative of the other law that may supplement the Uniform Commercial Code, and is not exclusive. No listing could be exhaustive. Further, the fact that a particular section of the Uniform Commercial Code makes express reference to other law is not intended to suggest the negation of the general application of the principles of subsection (b). Note also that the word "bankruptcy" in subsection (b), continuing the use of that word from former Section 1-103, should be understood not as a specific reference to federal bankruptcy law but, rather as a reference to general principles of insolvency, whether under federal or state law.

§ 28:1-104. Construction against implied repeal.

This subtitle being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-104.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-104.

1. This section embodies the policy that an act that bears evidence of carefully considered permanent regulative intention should not

lightly be regarded as impliedly repealed by subsequent legislation. The Uniform Commercial Code, carefully integrated and intended as a uniform codification of permanent character covering an entire “field” of law, is to be regarded as particularly resistant to implied repeal.

§ 28:1-105. Severability.

If any provision or clause of this subtitle or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-108.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-108.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-108.

1. This is the model severability section recommended by the National Conference of Commissioners on Uniform State Laws for inclusion in all acts of extensive scope.

§ 28:1-106. Use of singular and plural; gender.

In this subtitle, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and

(2) Words of any gender also refer to any other gender.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-102(5).

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-102(5). See also 1 U.S.C. Section 1.

Changes from former law: Other than minor stylistic changes, this section is identical to former Section 1-102(5).

1. This section makes it clear that the use of singular or plural in the text of the Uniform

Commercial Code is generally only a matter of drafting style — singular words may be applied in the plural, and plural words may be applied in the singular. Only when it is clear from the statutory context that the use of the singular or plural does not include the other is this rule inapplicable. See, e.g., Section 9-322.

§ 28:1-107. Section captions.

Section captions are part of this subtitle.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28-4902.

Legislative history of Law 19-299. — See note to § 28:1-101.

Prior Codifications. — 2001 Ed., § 28:1-109.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-109.

Changes from former law: None.

1. Section captions are a part of the text of the Uniform Commercial Code, and not mere surplusage. This is not the case, however, with

respect to subsection headings appearing in Article 9. See Comment 3 to Section 9-101 (“subsection headings are not a part of the official text itself and have not been approved by the sponsors.”).

§ 28:1-108. Relation to Electronic Signatures in Global and National Commerce Act.

This subtitle modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: New

1. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq. became effective in 2000. Section 102(a) of that Act provides that a State statute may modify, limit, or supersede the provisions of section 101 of that Act with respect to state law if such statute, *inter alia*,

specifies the alternative procedures or requirements for the use or acceptance (or both) of electronic records or electronic signatures to establish the legal effect, validity, or enforceability of contracts or other records, and (i) such alternative procedures or requirements are consistent with Titles I and II of that Act, (ii) such alternative procedures or requirements do

not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures; and (iii) if enacted or adopted after the date of the enactment of that Act, makes specific reference to that Act. Article 1 fulfills the first two of those three criteria; this Section fulfills the third criterion listed above.

2. As stated in this section, however, Article 1 does not modify, limit, or supersede Section 101(c) of the Electronic Signatures in Global and National Commerce Act (requiring affirmative consent from a consumer to electronic delivery of transactional disclosures that are required by state law to be in writing); nor does it authorize electronic delivery of any of the notices described in Section 103(b) of that Act.

Part 2. General Definitions and Principles of Interpretation.

§ 28:1-201. General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this subtitle that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this subtitle that apply to particular articles or parts thereof:

(1) “Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.

(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 28:1-303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or

customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. Buyer in ordinary course of business does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous", with reference to a term, means written, displayed, or presented so that a reasonable person against which it is to operate ought to have noticed it. Whether a term is conspicuous or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this subtitle and as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16)(A) "Document of title" means a record that:

(i) In the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers; and

(ii) Purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(B) The term "document of title" includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An "electronic document of title" means a document of title

evidenced by a record consisting of information stored in an electronic medium. A “tangible document of title” means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) “Fault” means a default, breach, or wrongful act or omission.

(18) “Fungible goods” means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) “Genuine” means free of forgery or counterfeiting.

(20) “Good faith,” except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) “Holder” means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) “Insolvency proceeding” includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) “Insolvent” means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) “Money” means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term “money” includes a monetary unit of account established by an intergovernmental organization or by agreement between 2 or more countries.

(25) “Organization” means a person other than an individual.

(26) “Party”, as distinguished from “third party”, means a person that has engaged in a transaction or made an agreement subject to this subtitle.

(27) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) “Purchase” means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term "security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. The term "security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 28:2-401, but a buyer may also acquire a security interest by complying with Article 9. Except as otherwise provided in § 28:2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a security interest, but a seller or lessor may also acquire a security interest by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 28:2-401 is limited in effect to a reservation of a security interest. Whether a transaction in the form of a lease creates a security interest is determined pursuant to § 28:1-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term "unauthorized signature" includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 3, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 2, 39 DCR 9165; Mar. 23, 1995, D.C. Law 10-249, § 2(b)(1), 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 27(jj), 44 DCR 1271; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(2), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103, § 28:4A-105, § 28:10-104, § 28-4915, § 40-102, § 50-601, and § 50-1201.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201.

Changes from former law: In order to make it clear that all definitions in the Uniform Commercial Code (not just those appearing in Article 1, as stated in former Section 1-201, but also those appearing in other Articles) do not apply if the context otherwise requires, a new subsection (a) to that effect has been added, and the definitions now appear in subsection (b). The reference in subsection (a) to the “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. In other words, the definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. Consider, for example, Sections 3-103(a)(9) (defining “promise,” in relevant part, as “a written undertaking to pay money signed by the person undertaking to pay”) and 3-303(a)(1) (indicating that an instrument is issued or transferred for value if “the instrument is issued or transferred for a promise of performance, to the extent that the promise has been performed.” It is clear from the statutory context of the use of the word “promise” in Section 3-303(a)(1) that the term was not used in the sense of its definition in Section 3-103(a)(9). Thus, the Section 3-103(a)(9) definition should not be used to give meaning to the word “promise” in Section 3-303(a).

Some definitions in former Section 1-201 have been reformulated as substantive provisions and have been moved to other sections. See Sections 1-202 (explicating concepts of notice and knowledge formerly addressed in Sections 1-201(25)-(27)), 1-204 (determining when a person gives value for rights, replacing the definition of “value” in former Section 1-201(44)), and 1-206 (addressing the meaning of presumptions, replacing the definitions of “presumption” and “presumed” in former Section 1-201(31)). Similarly, the portion of the definition of “security interest” in former Sec-

tion 1-201(37) which explained the difference between a security interest and a lease has been relocated to Section 1-203.

Two definitions in former Section 1-201 have been deleted. The definition of “honor” in former Section 1-201(21) has been moved to Section 2-103(1)(b), inasmuch as the definition only applies to the use of the word in Article 2. The definition of “telegram” in former Section 1-201(41) has been deleted because that word no longer appears in the definition of “conspicuous.”

Other than minor stylistic changes and renumbering, the remaining definitions in this section are as in former Article 1 except as noted below.

1. “Action.” Unchanged from former Section 1-201, which was derived from similar definitions in Section 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 58, Uniform Warehouse Receipts Act; Section 53, Uniform Bills of Lading Act.

2. “Aggrieved party.” Unchanged from former Section 1-201.

3. “Agreement.” Derived from former Section 1-201. As used in the Uniform Commercial Code the word is intended to include full recognition of usage of trade, course of dealing, course of performance and the surrounding circumstances as effective parts thereof, and of any agreement permitted under the provisions of the Uniform Commercial Code to displace a stated rule of law. Whether an agreement has legal consequences is determined by applicable provisions of the Uniform Commercial Code and, to the extent provided in Section 1-103, by the law of contracts.

4. “Bank.” Derived from Section 4A-104.

5. “Bearer.” Unchanged from former Section 1-201, which was derived from Section 191, Uniform Negotiable Instruments Law.

6. “Bill of Lading.” Derived from former Section 1-201. The reference to, and definition of, an “airbill” has been deleted as no longer necessary.

7. "Branch." Unchanged from former Section 1-201.

8. "Burden of establishing a fact." Unchanged from former Section 1-201.

9. "Buyer in ordinary course of business." Except for minor stylistic changes, identical to former Section 1-201 (as amended in conjunction with the 1999 revisions to Article 9). The major significance of the phrase lies in Section 2-403 and in the Article on Secured Transactions (Article 9).

The first sentence of paragraph (9) makes clear that a buyer from a pawnbroker cannot be a buyer in ordinary course of business. The second sentence explains what it means to buy "in the ordinary course." The penultimate sentence prevents a buyer that does not have the right to possession as against the seller from being a buyer in ordinary course of business. Concerning when a buyer obtains possessory rights, see Sections 2-502 and 2-716. However, the penultimate sentence is not intended to affect a buyer's status as a buyer in ordinary course of business in cases (such as a "drop shipment") involving delivery by the seller to a person buying from the buyer or a donee from the buyer. The requirement relates to whether as against the seller the buyer or one taking through the buyer has possessory rights.

10. "Conspicuous." Derived from former Section 1-201(10). This definition states the general standard that to be conspicuous a term ought to be noticed by a reasonable person. Whether a term is conspicuous is an issue for the court. Subparagraphs (A) and (B) set out several methods for making a term conspicuous. Requiring that a term be conspicuous blends a notice function (the term ought to be noticed) and a planning function (giving guidance to the party relying on the term regarding how that result can be achieved). Although these paragraphs indicate some of the methods for making a term attention-calling, the test is whether attention can reasonably be expected to be called to it. The statutory language should not be construed to permit a result that is inconsistent with that test.

11. "Consumer." Derived from Section 9-102(a)(25).

12. "Contract." Except for minor stylistic changes, identical to former Section 1-201.

13. "Creditor." Unchanged from former Section 1-201.

14. "Defendant." Except for minor stylistic changes, identical to former Section 1-201, which was derived from Section 76, Uniform Sales Act.

15. "Delivery." Derived from former Section 1-201. The reference to certificated securities has been deleted in light of the more specific treatment of the matter in Section 8-301.

16. "Document of title." Unchanged from former Section 1-201, which was derived from

Section 76, Uniform Sales Act. By making it explicit that the obligation or designation of a third party as "bailee" is essential to a document of title, this definition clearly rejects any such result as obtained in *Hixson v. Ward*, 254 Ill.App. 505 (1929), which treated a conditional sales contract as a document of title. Also the definition is left open so that new types of documents may be included. It is unforeseeable what documents may one day serve the essential purpose now filled by warehouse receipts and bills of lading. Truck transport has already opened up problems which do not fit the patterns of practice resting upon the assumption that a draft can move through banking channels faster than the goods themselves can reach their destination. There lie ahead air transport and such probabilities as teletype transmission of what may some day be regarded commercially as "Documents of Title." The definition is stated in terms of the function of the documents with the intention that any document which gains commercial recognition as accomplishing the desired result shall be included within its scope. Fungible goods are adequately identified within the language of the definition by identification of the mass of which they are a part.

Dock warrants were within the Sales Act definition of document of title apparently for the purpose of recognizing a valid tender by means of such paper. In current commercial practice a dock warrant or receipt is a kind of interim certificate issued by steamship companies upon delivery of the goods at the dock, entitling a designated person to have issued to him at the company's office a bill of lading. The receipt itself is invariably nonnegotiable in form although it may indicate that a negotiable bill is to be forthcoming. Such a document is not within the general compass of the definition, although trade usage may in some cases entitle such paper to be treated as a document of title. If the dock receipt actually represents a storage obligation undertaken by the shipping company, then it is a warehouse receipt within this section regardless of the name given to the instrument.

The goods must be "described," but the description may be by marks or labels and may be qualified in such a way as to disclaim personal knowledge of the issuer regarding contents or condition. However, baggage and parcel checks and similar "tokens" of storage which identify stored goods only as those received in exchange for the token are not covered by this Article.

The definition is broad enough to include an airway bill.

17. "Fault." Derived from former Section 1-201. "Default" has been added to the list of events constituting fault.

18. "Fungible goods." Derived from former Section 1-201. References to securities have been deleted because Article 8 no longer uses

the term “fungible” to describe securities. Accordingly, this provision now defines the concept only in the context of goods.

19. “Genuine.” Unchanged from former Section 1-201.

20. “Good faith.” Former Section 1-201(19) defined “good faith” simply as honesty in fact; the definition contained no element of commercial reasonableness. Initially, that definition applied throughout the Code with only one exception. Former Section 2-103(1)(b) provided that “*in this Article*... good faith in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” This alternative definition was limited in applicability in three ways. First, it applied only to transactions within the scope of Article 2. Second, it applied only to merchants. Third, strictly construed it applied only to uses of the phrase “good faith” *in Article 2*; thus, so construed it would not define “good faith” for its most important use—the obligation of good faith imposed by former Section 1-203.

Over time, however, amendments to the Uniform Commercial Code brought the Article 2 merchant concept of good faith (subjective honesty and objective commercial reasonableness) into other Articles. First, Article 2A explicitly incorporated the Article 2 standard. See Section 2A-103(7). Then, other Articles broadened the applicability of that standard by adopting it for all parties rather than just for merchants. See, e.g., Sections 3-103(a)(4), 4A-105(a)(6), 8-102(a)(10), and 9-102(a)(43). All of these definitions are comprised of two elements—honesty in fact *and* the observance of reasonable commercial standards of fair dealing. Only revised Article 5 defines “good faith” solely in terms of subjective honesty, and only Article 6 and Article 7 are without definitions of good faith. (It should be noted that, while revised Article 6 did not define good faith, Comment 2 to revised Section 6-102 states that “this Article adopts the definition of ‘good faith’ in Article 1 in all cases, even when the buyer is a merchant.”) Given these developments, it is appropriate to move the broader definition of “good faith” to Article 1. Of course, this definition is subject to the applicability of the narrower definition in revised Article 5.

21. “Holder.” Derived from former Section 1-201. The definition has been reorganized for clarity.

22. “Insolvency proceedings.” Unchanged from former Section 1-201.

23. “Insolvent.” Derived from former Section 1-201. The three tests of insolvency—“generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute as to them,” “unable to pay debts as they become due,” and “insolvent within the meaning of the federal bankruptcy law”—are

expressly set up as alternative tests and must be approached from a commercial standpoint.

24. “Money.” Substantively identical to former Section 1-201. The test is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected.

25. “Organization.” The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

26. “Party.” Substantively identical to former Section 1-201. Mention of a party includes, of course, a person acting through an agent. However, where an agent comes into opposition or contrast to the principal, particular account is taken of that situation.

27. “Person.” The former definition of this word has been replaced with the standard definition used in acts prepared by the National Conference of Commissioners on Uniform State Laws.

28. “Present value.” This definition was formerly contained within the definition of “security interest” in former Section 1-201(37).

29. “Purchase.” Derived from former Section 1-201. The form of definition has been changed from “includes” to “means.”

30. “Purchaser.” Unchanged from former Section 1-201.

31. “Record.” Derived from Section 9-102(a)(69).

32. “Remedy.” Unchanged from former Section 1-201. The purpose is to make it clear that both remedy and right (as defined) include those remedial rights of “self help” which are among the most important bodies of rights under the Uniform Commercial Code, remedial rights being those to which an aggrieved party may resort on its own.

33. “Representative.” Derived from former Section 1-201. Reorganized, and form changed from “includes” to “means.”

34. “Right.” Except for minor stylistic changes, identical to former Section 1-201.

35. “Security Interest.” The definition is the first paragraph of the definition of “security interest” in former Section 1-201, with minor stylistic changes. The remaining portion of that definition has been moved to Section 1-203. Note that, because of the scope of Article 9, the term includes the interest of certain outright buyers of certain kinds of property.

36. “Send.” Derived from former Section 1-201. Compare “notifies.”

37. “Signed.” Derived from former Section 1-201. Former Section 1-201 referred to “intention to authenticate”; because other articles now use the term “authenticate,” the language

has been changed to "intention to adopt or accept." The latter formulation is derived from the definition of "authenticate" in Section 9-102(a)(7). This provision refers only to writings, because the term "signed," as used in some articles, refers only to writings. This provision also makes it clear that, as the term "signed" is used in the Uniform Commercial Code, a complete signature is not necessary. The symbol may be printed, stamped or written; it may be by initials or by thumbprint. It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. No catalog of possible situations can be complete and the court must use common sense and commercial experience in passing upon these matters. The question always is whether the symbol was executed or adopted by the party with present intention to adopt or accept the writing.

38. "State." This is the standard definition of the term used in acts prepared by the National

Conference of Commissioners on Uniform State Laws.

39. "Surety." This definition makes it clear that "surety" includes all secondary obligors, not just those whose obligation refers to the person obligated as a surety. As to the nature of secondary obligations generally, see Restatement (Third), Suretyship and Guaranty Section 1 (1996).

40. "Term." Unchanged from former Section 1-201.

41. "Unauthorized signature." Unchanged from former Section 1-201.

42. "Warehouse receipt." Unchanged from former Section 1-201, which was derived from Section 76(1), Uniform Sales Act; Section 1, Uniform Warehouse Receipts Act. Receipts issued by a field warehouse are included, provided the warehouseman and the depositor of the goods are different persons.

43. "Written" or "writing." Unchanged from former Section 1-201.

§ 28:1-202. Notice; knowledge.

(a) Subject to subsection (f) of this section, a person has "notice" of a fact if the person:

- (1) Has actual knowledge of it;
- (2) Has received a notice or notification of it; or
- (3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.

(e) Subject to subsection (f) of this section, a person "receives" a notice or notification when:

- (1) It comes to that person's attention; or
- (2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual

acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Aug. 30, 1964, 78 Stat. 679, Pub. L. 88-509, § 4; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:4A-106.

Prior Codifications. — 2001 Ed., § 28:1-201(25)-(27).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Derived from former Section 1-201(25)-(27).

Changes from former law: These provisions are substantive rather than purely definitional. Accordingly, they have been relocated from Section 1-201 to this section. The reference to the “forgotten notice” doctrine has been deleted.

1. Under subsection (a), a person has notice of a fact when, inter alia, the person has received a notification of the fact in question.

2. As provided in subsection (d), the word “notifies” is used when the essential fact is the

proper dispatch of the notice, not its receipt. Compare “Send.” When the essential fact is the other party's receipt of the notice, that is stated. Subsection (e) states when a notification is received.

3. Subsection (f) makes clear that notice, knowledge, or a notification, although “received,” for instance, by a clerk in Department A of an organization, is effective for a transaction conducted in Department B only from the time when it was or should have been communicated to the individual conducting that transaction.

§ 28:1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

- (2) The lessee assumes risk of loss of the goods;
- (3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) The lessee has an option to renew the lease or to become the owner of the goods;
- (5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

- (1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or
- (2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The remaining economic life of the goods and reasonably predictable fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 3, 29 DCR 309; July 22, 1992, D.C. Law 9-128, § 2(c)(2), 39 DCR 3830; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(2), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201.

Prior Codifications. — 2001 Ed., § 28:1-201(37).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(37).

Changes from former law: This section is substantively identical to those portions of former Section 1-201(37) that distinguished “true” leases from security interests, except that the definition of “present value” formerly embedded in Section 1-201(37) has been placed in Section 1-201(28).

1. An interest in personal property or fixtures which secures payment or performance of an obligation is a “security interest.” See Section 1-201(37). Security interests are sometimes created by transactions in the form of leases. Because it can be difficult to distinguish leases that create security interests from those that do

not, this section provides rules that govern the determination of whether a transaction in the form of a lease creates a security interest.

2. One of the reasons it was decided to codify the law with respect to leases was to resolve an issue that created considerable confusion in the courts: what is a lease? The confusion existed, in part, due to the last two sentences of the definition of security interest in the 1978 Official Text of the Act, Section 1-201(37). The confusion was compounded by the rather considerable change in the federal, state and local tax laws and accounting rules as they relate to leases of goods. The answer is important because the definition of lease determines not

only the rights and remedies of the parties to the lease but also those of third parties. If a transaction creates a lease and not a security interest, the lessee's interest in the goods is limited to its leasehold estate; the residual interest in the goods belongs to the lessor. This has significant implications to the lessee's creditors. "On common law theory, the lessor, since he has not parted with title, is entitled to full protection against the lessee's creditors and trustee in bankruptcy_____ " 1 G. Gilmore, *Security Interests in Personal Property* Section 3.6, at 76 (1965).

Under pre-UCC chattel security law there was generally no requirement that the lessor file the lease, a financing statement, or the like, to enforce the lease agreement against the lessee or any third party; the Article on Secured Transactions (Article 9) did not change the common law in that respect. Coogan, *Leasing and the Uniform Commercial Code*, in *Equipment Leasing-Leveraged Leasing* 681, 700 n.25, 729 n.80 (2d ed. 1980). The Article on Leases (Article 2A) did not change the law in that respect, except for leases of fixtures. Section 2A-309. An examination of the common law will not provide an adequate answer to the question of what is a lease. The definition of security interest in Section 1-201(37) of the 1978 Official Text of the Act provided that the Article on Secured Transactions (Article 9) governs security interests disguised as leases, *i.e.*, leases intended as security; however, the definition became vague and outmoded.

Lease is defined in Article 2A as a transfer of the right to possession and use of goods for a term, in return for consideration. Section 2A-103(1)(j). The definition continues by stating that the retention or creation of a security interest is not a lease. Thus, the task of sharpening the line between true leases and security interests disguised as leases continues to be a function of this Article.

This section begins where Section 1-201(35) leaves off. It draws a sharper line between leases and security interests disguised as leases to create greater certainty in commercial transactions.

Prior to enactment of the rules now codified in this section, the 1978 Official Text of Section 1-201(37) provided that whether a lease was intended as security (*i.e.*, a security interest disguised as a lease) was to be determined from the facts of each case; however, (a) the inclusion of an option to purchase did not itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee would become, or had the option to become, the owner of the property for no additional consideration, or for a nominal consideration, did make the lease one intended for security.

Reference to the intent of the parties to

create a lease or security interest led to unfortunate results. In discovering intent, courts relied upon factors that were thought to be more consistent with sales or loans than leases. Most of these criteria, however, were as applicable to true leases as to security interests. Examples include the typical net lease provisions, a purported lessor's lack of storage facilities or its character as a financing party rather than a dealer in goods. Accordingly, this section contains no reference to the parties' intent.

Subsections (a) and (b) were originally taken from Section 1(2) of the Uniform Conditional Sales Act (act withdrawn 1943), modified to reflect current leasing practice. Thus, reference to the case law prior to the incorporation of those concepts in this article will provide a useful source of precedent. Gilmore, *Security Law, Formalism and Article 9*, 47 Neb.L.Rev. 659, 671 (1968). Whether a transaction creates a lease or a security interest continues to be determined by the facts of each case. Subsection (b) further provides that a transaction creates a security interest if the lessee has an obligation to continue paying consideration for the term of the lease, if the obligation is not terminable by the lessee (thus correcting early statutory gloss, *e.g.*, *In re Royer's Bakery, Inc.*, 1 U.C.C. Rep.Serv. (Callaghan) 342 (Bankr.E.D.Pa. 1963)) and if one of four additional tests is met. The first of these four tests, subparagraph (1), is that the original lease term is equal to or greater than the remaining economic life of the goods. The second of these tests, subparagraph (2), is that the lessee is either bound to renew the lease for the remaining economic life of the goods or to become the owner of the goods. *In re Gehrke Enters.*, 1 Bankr. 647, 651-52 (Bankr.W.D.Wis. 1979). The third of these tests, subparagraph (3), is whether the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration, which is defined later in this section. *In re Celeryvale Transp.*, 44 Bankr. 1007, 1014-15 (Bankr.E.D.Tenn. 1984). The fourth of these tests, subparagraph (4), is whether the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration. All of these tests focus on economics, not the intent of the parties. *In re Berge*, 32 Bankr. 370, 371-73 (Bankr.W.D.Wis. 1983).

The focus on economics is reinforced by subsection (c). It states that a transaction does not create a security interest merely because the transaction has certain characteristics listed therein. Subparagraph (1) has no statutory derivative; it states that a full payout lease does not *per se* create a security interest. *Rushton v. Shea*, 419 F.Supp. 1349, 1365 (D.Del. 1976). Subparagraphs (2) and (3) pro-

vide the same regarding the provisions of the typical net lease. *Compare All-States Leasing Co. v. Ochs*, 42 Or.App. 319, 600 P.2d 899 (Ct.App. 1979), with *In re Tillery*, 571 F.2d 1361 (5th Cir.1978). Subparagraph (4) restates and expands the provisions of the 1978 Official Text of Section 1-201(37) to make clear that the option can be to buy or renew. Subparagraphs (5) and (6) treat fixed price options and provide that fair market value must be determined at the time the transaction is entered into. *Compare Arnold Mach. Co. v. Balls*, 624 P.2d 678 (Utah 1981), with *Aoki v. Shepherd Mach. Co.*, 665 F.2d 941 (9th Cir.1982).

The relationship of subsection (b) to subsection (c) deserves to be explored. The fixed price purchase option provides a useful example. A fixed price purchase option in a lease does not of itself create a security interest. This is particularly true if the fixed price is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed. A security interest is created only if the option price is nominal and the conditions stated in the introduction to the second paragraph of this subsection are met. There is a set of purchase options whose fixed

price is less than fair market value but greater than nominal that must be determined on the facts of each case to ascertain whether the transaction in which the option is included creates a lease or a security interest.

It was possible to provide for various other permutations and combinations with respect to options to purchase and renew. For example, this section could have stated a rule to govern the facts of *In re Marhoefer Packing Co.*, 674 F.2d 1139 (7th Cir.1982). This was not done because it would unnecessarily complicate the definition. Further development of this rule is left to the courts.

Subsections (d) and (e) provide definitions and rules of construction.

Emerging Issues Analysis: Professor Margit Livingston on Putative Leases as Article 9 Secured Transactions. In most cases, filing a financing statement will protect the lessor/secured party from other secured parties. However, one type of transaction has bedeviled the courts for many years: the secured transaction disguised as a lease. Professor Livingston examines whether a corporation's possessory repairman's lien take priority over a lessor's security interest.

§ 28:1-204. Value.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

- (1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (2) As security for, or in total or partial satisfaction of, a preexisting claim;
- (3) By accepting delivery under a preexisting contract for purchase; or
- (4) In return for any consideration sufficient to support a simple contract.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(jj), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-201(44).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(44).

Changes from former law: Unchanged from former Section 1-201, which was derived from Sections 25, 26, 27, 191, Uniform Negotiable Instruments Law; Section 76, Uniform Sales Act; Section 53, Uniform Bills of Lading Act; Section 58, Uniform Warehouse Receipts Act; Section 22(1), Uniform Stock Transfer Act; Section 1, Uniform Trust Receipts Act. These provisions are substantive rather than purely

definitional. Accordingly, they have been relocated from former Section 1-201 to this section.

1. All the Uniform Acts in the commercial law field (except the Uniform Conditional Sales Act) have carried definitions of "value." All those definitions provided that value was any consideration sufficient to support a simple contract, including the taking of property in satisfaction of or as security for a pre-existing claim. Subsections (1), (2), and (4) in substance continue

the definitions of “value” in the earlier acts. Subsection (3) makes explicit that “value” is also given in a third situation: where a buyer by taking delivery under a pre-existing contract converts a contingent into a fixed obligation.

This definition is not applicable to Articles 3 and 4, but the express inclusion of immediately available credit as value follows the separate definitions in those Articles. See Sections 4-208, 4-209, 3-303. A bank or other financing agency which in good faith makes advances against property held as collateral becomes a bona fide

purchaser of that property even though provision may be made for charge-back in case of trouble. Checking credit is “immediately available” within the meaning of this section if the bank would be subject to an action for slander of credit in case checks drawn against the credit were dishonored, and when a charge-back is not discretionary with the bank, but may only be made when difficulties in collection arise in connection with the specific transaction involved.

§ 28:1-205. Reasonable time; seasonableness.

(a) Whether a time for taking an action required by this subtitle is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-204(2), (3).

Legislative history of Law 19-299. — See note to § 28:1-201.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-204(2)-(3).

Changes from former law: This section is derived from subsections (2) and (3) of former Section 1-204. Subsection (1) of that section is now incorporated in Section 1-302(b).

1. Subsection (a) makes it clear that requirements that actions be taken within a “reasonable” time are to be applied in the transactional context of the particular action.

2. Under subsection (b), the agreement that fixes the time need not be part of the main agreement, but may occur separately. Notice also that under the definition of “agreement” (Section 1-201) the circumstances of the transaction, including course of dealing or usages of trade or course of performance may be material. On the question what is a reasonable time these matters will often be important.

§ 28:1-206. Presumptions.

Whenever this subtitle creates a presumption with respect to a fact, or provides that a fact is presumed, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28-4902.

Prior Codifications. — 2001 Ed., § 28:1-201(31).

Legislative history of Law 19-299. — See note to § 28:1-201.

Editor’s notes. — The 2013 revision of this article deleted former § 28:1-206. Former § 28:1-206 concerned a statute of frauds for kinds of personal property not otherwise cov-

ered, was derived from Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-240, § 3(c), 44 DCR 1087. The other articles of the Uniform Commercial Code make individual determinations as to requirements for memorializing transactions within their scope, so that the primary effect of former Section 1-206 was to impose a writing requirement on sales transactions not otherwise governed by the UCC. Per the official commentary appearing

under § 28:1-206: "Deletion of former Section 1-206 did not constitute a recommendation as to whether such sales transactions should be covered by a Statute of Frauds; rather, it re-

flected determination that there was no need for uniform commercial law to resolve that issue."

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-201(31).

Changes from former law: None, other than stylistic changes.

1. Several sections of the Uniform Commercial Code state that there is a "presumption" as

to a certain fact, or that the fact is "presumed."

This section, derived from the definition appearing in former Section 1-201(31), indicates the effect of those provisions on the proof process.

Part 3. Territorial Applicability and General Rules.

§ 28:1-301. Territorial applicability; parties' power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

(b) In the absence of an agreement effective under subsection (a) of this section, and except as provided in subsection (c) of this section, this subtitle applies to transactions bearing an appropriate relation to the District of Columbia.

(c) If one of the following provisions of this subtitle specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

- (1) Section 28:2-402;
- (2) Sections 28:2A-105 and 28:2A-106;
- (3) Section 28:4-102;
- (4) Section 28:4A-507;
- (5) Section 28:5-116;
- (6) Section 28:8-110;
- (7) Sections 28:9-301 through 9-307.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 2, 29 DCR 309; Apr. 30, 1992, D.C. Law 9-95, § 2(b), 39 DCR 1595; July 22, 1992, D.C. Law 9-128, § 2(c)(1), 39 DCR 3830; Apr. 9, 1997, D.C. Law 11-238, § 3(b), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-239, § 3(b), 44 DCR 963; Apr. 9, 1997, D.C. Law 11-240, § 3(b), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(ii), 44 DCR 1271; Oct. 26, 2000, D.C. Law 13-201, § 201(b)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-105.

Legislative history of Law 19-299. — See note to § 28:1-101.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-105.

Summary of changes from former law:

Section 1-301, which replaces former Section 1-105, represents a significant rethinking of choice of law issues addressed in that section. The new section reexamines both the power of parties to select the jurisdiction whose law will govern their transaction and the determination of the governing law in the absence of such selection by the parties. With respect to the power to select governing law, the draft affords greater party autonomy than former Section 1-105, but with important safeguards protecting consumer interests and fundamental policies.

Section 1-301 addresses contractual designation of governing law somewhat differently than does former Section 1-105. Former law allowed the parties to any transaction to designate a jurisdiction whose law governs if the transaction bears a "reasonable relation" to that jurisdiction. Section 1-301 deviates from this approach by providing different rules for transactions involving a consumer than for non-consumer transactions, such as "business to business" transactions.

In the context of consumer transactions, the language of Section 1-301, unlike that of former Section 1-105, protects consumers against the possibility of losing the protection of consumer protection rules applicable to the aspects of the transaction governed by the Uniform Commercial Code. In most situations, the relevant consumer protection rules will be those of the consumer's home jurisdiction. A special rule, however, is provided for certain face-to-face sales transactions. (See Comment 3.)

In the context of business-to-business transactions, Section 1-301 generally provides the parties with greater autonomy to designate a jurisdiction whose law will govern than did former Section 1-105, but also provides safeguards against abuse that did not appear in former Section 1-105. In the non-consumer context, following emerging international norms, greater autonomy is provided in subsections (c)(1) and (c)(2) by deleting the former requirement that the transaction bear a "reasonable relation" to the jurisdiction. In the case of wholly domestic transactions, however, the jurisdiction designated must be a State. (See Comment 4.)

An important safeguard not present in former Section 1-105 is found in subsection (f). Subsection (f) provides that the designation of a jurisdiction's law is not effective (even if the transaction bears a reasonable relation to that jurisdiction) to the extent that application of that law would be contrary to a fundamental policy of the jurisdiction whose law would gov-

ern in the absence of contractual designation. Application of the law designated may be contrary to a fundamental policy of the State or country whose law would otherwise govern either because of the nature of the law designated or because of the "mandatory" nature of the law that would otherwise apply. (See Comment 6.)

In the absence of an effective contractual designation of governing law, former Section 1-105(1) directed the forum to apply its own law if the transaction bore "an appropriate relation to this state." This direction, however, was frequently ignored by courts. Section 1-301(d) provides that, in the absence of an effective contractual designation, the forum should apply the forum's general choice of law principles, subject to certain special rules in consumer transactions. (See Comments 3 and 7).

1. *Applicability of section.* This section is neither a complete restatement of choice of law principles nor a free-standing choice of law statute. Rather, it is a provision of Article 1 of the Uniform Commercial Code. As such, the scope of its application is limited in two significant ways.

First, this section is subject to Section 1-102, which states the scope of Article 1. As that section indicates, Article 1, and the rules contained therein, apply to transactions to the extent that they are governed by one of the other Articles of the Uniform Commercial Code. Thus, this section does not apply to matters outside the scope of the Uniform Commercial Code, such as a services contract, a credit card agreement, or a contract for the sale of real estate. This limitation was implicit in former Section 1-105, and is made explicit in Section 1-301(b).

Second, subsection (g) provides that this section is subject to the specific choice of law provisions contained in other Articles of the Uniform Commercial Code. Thus, to the extent that a transaction otherwise within the scope of this section also is within the scope of one of those provisions, the rules of that specific provision, rather than of this section, apply.

The following cases illustrate these two limitations on the scope of Section 1-301:

Example 1: A, a resident of Indiana, enters into an agreement with Credit Card Company, a Delaware corporation with its chief executive office located in New York, pursuant to which A agrees to pay Credit Card Company for purchases charged to A's credit card. The agreement contains a provision stating that it is governed by the law of South Dakota. The choice of law rules in Section 1-301 do not apply to this agreement because the agreement is not governed by any of the other Articles of the Uniform Commercial Code.

Example 2: A, a resident of Indiana, maintains a checking account with Bank B, an Ohio banking corporation located in Ohio. At the time that the account was established, Bank B and A entered into a "Bank-Customer Agreement" governing their relationship with respect to the account. The Bank-Customer Agreement contains some provisions that purport to limit the liability of Bank B with respect to its decisions whether to honor or dishonor checks purporting to be drawn on A's account. The Bank-Customer Agreement also contains a provision stating that it is governed by the law of Ohio. The provisions purporting to limit the liability of Bank B deal with issues governed by Article 4. Therefore, determination of the law applicable to those issues (including determination of the effectiveness of the choice of law clause as it applies to those issues) is within the scope of Section 1-301 as provided in subsection (b). Nonetheless, the rules of Section 1-301 would not apply to that determination because of subsection (g), which states that the choice of law rules in Section 4-102 govern instead.

2. *Contractual choice of law.* This section allows parties broad autonomy, subject to several important limitations, to select the law governing their transaction, even if the transaction does not bear a relation to the State or country whose law is selected. This recognition of party autonomy with respect to governing law has already been established in several Articles of the Uniform Commercial Code (see Sections 4A-507, 5-116, and 8-110) and is consistent with international norms. See, e.g., Inter-American Convention on the Law Applicable to International Contracts, Article 7 (Mexico City 1994); Convention on the Law Applicable to Contracts for the International Sale of Goods, Article 7(1) (The Hague 1986); EC Convention on the Law Applicable to Contractual Obligations, Article 3(1) (Rome 1980).

There are three important limitations on this party autonomy to select governing law. First, a different, and more protective, rule applies in the context of consumer transactions. (See Comment 3). Second, in an entirely domestic transaction, this section does not validate the selection of foreign law. (See Comment 4.) Third, contractual choice of law will not be given effect to the extent that application of the law designated would be contrary to a fundamental policy of the State or country whose law would be applied in the absence of such contractual designation. (See Comment 6).

This Section does not address the ability of parties to designate non-legal codes such as trade codes as the set of rules governing their transaction. The power of parties to make such a designation as part of their agreement is found in the principles of Section 1-302. That Section, allowing parties broad freedom of contract to structure their relations, is adequate

for this purpose. This is also the case with respect to the ability of the parties to designate recognized bodies of rules or principles applicable to commercial transactions that are promulgated by intergovernmental organizations such as UNCITRAL or Unidroit. See, e.g., Unidroit Principles of International Commercial Contracts.

3. *Consumer transactions.* If one of the parties is a consumer (as defined in Section 1-201(b)(11)), subsection (e) provides the parties less autonomy to designate the State or country whose law will govern.

First, in the case of a consumer transaction, subsection (e)(1) provides that the transaction must bear a reasonable relation to the State or country designated. Thus, the rules of subsection (c) allowing the parties to choose the law of a jurisdiction to which the transaction bears no relation do not apply to consumer transactions.

Second, subsection (e)(2) provides that application of the law of the State or country determined by the rules of this section (whether or not that State or country was designated by the parties) cannot deprive the consumer of the protection of rules of law which govern matters within the scope of Section 1-301, are protective of consumers, and are not variable by agreement. The phrase "rule of law" is intended to refer to case law as well as statutes and administrative regulations. The requirement that the rule of law be one "governing a matter within the scope of this section" means that, consistent with the scope of Section 1-301, which governs choice of law only with regard to the aspects of a transaction governed by the Uniform Commercial Code, the relevant consumer rules are those that govern those aspects of the transaction. Such rules may be found in the Uniform Commercial Code itself, as are the consumer-protective rules in Part 6 of Article 9, or in other law if that other law governs the UCC aspects of the transaction. See, for example, the rule in Section 2.403 of the Uniform Consumer Credit Code which prohibits certain sellers and lessors from taking negotiable instruments other than checks and provides that a holder is not in good faith if the holder takes a negotiable instrument with notice that it is issued in violation of that section.

With one exception (explained in the next paragraph), the rules of law the protection of which the consumer may not be deprived are those of the jurisdiction in which the consumer principally resides. The jurisdiction in which the consumer principally resides is determined at the time relevant to the particular issue involved. Thus, for example, if the issue is one related to formation of a contract, the relevant consumer protective rules are rules of the jurisdiction in which the consumer principally resided at the time the facts relevant to contract formation occurred, even if the consumer no

longer principally resides in that jurisdiction at the time the dispute arises or is litigated. If, on the other hand, the issue is one relating to enforcement of obligations, then the relevant consumer protective rules are those of the jurisdiction in which the consumer principally resides at the time enforcement is sought, even if the consumer did not principally reside in that jurisdiction at the time the transaction was entered into.

In the case of a sale of goods to a consumer, in which the consumer both makes the contract and takes possession of the goods in the same jurisdiction and that jurisdiction is not the consumer's principal residence, the rule in subsection (e)(2)(B) applies. In that situation, the relevant consumer protective rules, the protection of which the consumer may not be deprived by the choice of law rules of subsections (c) and (d), are those of the State or country in which both the contract is made and the consumer takes delivery of the goods. This rule, adapted from Section 2A-106 and Article 5 of the EC Convention on the Law Applicable to Contractual Obligations, enables a seller of goods engaging in face-to-face transactions to ascertain the consumer protection rules to which those sales are subject, without the necessity of determining the principal residence of each buyer. The reference in subsection (e)(2)(B) to the State or country in which the consumer makes the contract should not be read to incorporate formalistic concepts of where the last event necessary to conclude the contract took place; rather, the intent is to identify the state in which all material steps necessary to enter into the contract were taken by the consumer.

The following examples illustrate the application of Section 1-301(e)(2) in the context of a contractual choice of law provision:

Example 3: Seller, located in State A, agrees to sell goods to Consumer, whose principal residence is in State B. The parties agree that the law of State A would govern this transaction. Seller ships the goods to Consumer in State B. An issue related to contract formation subsequently arises. Under the law of State A, that issue is governed by State A's uniform version of Article 2. Under the law of State B, that issue is governed by a non-uniform rule, protective of consumers and not variable by agreement, that brings about a different result than would occur under the uniform version of Article 2. Under Section 1-301(e)(2)(A), the parties' agreement that the law of State A would govern their transaction cannot deprive Consumer of the protection of State B's consumer protective rule. This is the case whether State B's rule is codified in Article 2 of its Uniform Commercial Code or is found elsewhere in the law of State B.

Example 4: Same facts as Example 3, except that (i) Consumer takes all material steps nec-

essary to enter into the agreement to purchase the goods from Seller, and takes delivery of those goods, while on vacation in State A and (ii) the parties agree that the law of State C (in which Seller's chief executive office is located) would govern their transaction. Under subsections (c)(1) and (e)(1), the designation of the law of State C as governing will be effective so long as the transaction is found to bear a reasonable relation to State C (assuming that the relevant law of State C is not contrary to a fundamental policy of the State whose law would govern in the absence of agreement), but that designation cannot deprive Consumer of the protection of any rule of State A that is within the scope of this section and is both protective of consumers and not variable by agreement. State B's consumer protective rule is not relevant because, under Section 1-301(e)(2)(B), the relevant consumer protective rules are those of the jurisdiction in which the consumer both made the contract and took delivery of the goods — here, State A — rather than those of the jurisdiction in which the consumer principally resides.

It is important to note that subsection (e)(2) applies to all determinations of applicable law in transactions in which one party is a consumer, whether that determination is made under subsection (c) (in cases in which the parties have designated the governing law in their agreement) or subsection (d) (in cases in which the parties have not made such a designation). In the latter situation, application of the otherwise-applicable conflict of laws principles of the forum might lead to application of the laws of a State or country other than that of the consumer's principal residence. In such a case, however, subsection (e)(2) applies to preserve the applicability of consumer protection rules for the benefit of the consumer as described above.

4. Wholly domestic transactions. While this Section provides parties broad autonomy to select governing law, that autonomy is limited in the case of wholly domestic transactions. In a "domestic transaction," subsection (c)(1) validates only the designation of the law of a State. A "domestic transaction" is a transaction that does not bear a reasonable relation to a country other than the United States. (See subsection (a)). Thus, in a wholly domestic non-consumer transaction, parties may (subject to the limitations set out in subsections (f) and (g)) designate the law of any State but not the law of a foreign country.

5. International transactions. This section provides greater autonomy in the context of international transactions. As defined in subsection (a)(2), a transaction is an "international transaction" if it bears a reasonable relation to a country other than the United States. In a non-consumer international transaction, subsection (c)(2) provides that a designation of the

law of any State or country is effective (subject, of course, to the limitations set out in subsections (f) and (g)). It is important to note that the transaction need not bear a relation to the State or country designated if the transaction is international. Thus, for example, in a non-consumer lease of goods in which the lessor is located in Mexico and the lessee is located in Louisiana, a designation of the law of Ireland to govern the transaction would be given effect under this section even though the transaction bears no relation to Ireland. The ability to designate the law of any country in non-consumer international transactions is important in light of the common practice in many commercial contexts of designating the law of a "neutral" jurisdiction or of a jurisdiction whose law is well-developed. If a country has two or more territorial units in which different systems of law relating to matters within the scope of this section are applicable (as is the case, for example, in Canada and the United Kingdom), subsection (c)(2) should be applied to designation by the parties of the law of one of those territorial units. Thus, for example, subsection (c)(2) should be applied if the parties to a non-consumer international transaction designate the laws of Ontario or Scotland as governing their transaction.

6. Fundamental policy. Subsection (f) provides that an agreement designating the governing law will not be given effect to the extent that application of the designated law would be contrary to a fundamental policy of the State or country whose law would otherwise govern. This rule provides a narrow exception to the broad autonomy afforded to parties in subsection (c). One of the prime objectives of contract law is to protect the justified expectations of the parties and to make it possible for them to foretell with accuracy what will be their rights and liabilities under the contract. In this way, certainty and predictability of result are most likely to be secured. See Restatement (Second) Conflict of Laws, Section 187, comment *e*.

Under the fundamental policy doctrine, a court should not refrain from applying the designated law merely because application of that law would lead to a result different than would be obtained under the local law of the State or country whose law would otherwise govern. Rather, the difference must be contrary to a public policy of that jurisdiction that is so substantial that it justifies overriding the concerns for certainty and predictability underlying modern commercial law as well as concerns for judicial economy generally. Thus, application of the designated law will rarely be found to be contrary to a fundamental policy of the State or country whose law would otherwise govern when the difference between the two concerns a requirement, such as a statute of frauds, that relates to formalities, or general

rules of contract law, such as those concerned with the need for consideration.

The opinion of Judge Cardozo in *Loucks v. Standard Oil Co. of New York*, 120 N.E. 198 (1918), regarding the related issue of when a state court may decline to apply the law of another state, is a helpful touchstone here:

Our own scheme of legislation may be different. We may even have no legislation on the subject. That is not enough to show that public policy forbids us to enforce the foreign right. A right of action is property. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the plaintiff in getting what belongs to him. We are not so provincial as to say that every solution of a problem is wrong because we deal with it otherwise at home. Similarity of legislation has indeed this importance; its presence shows beyond question that the foreign statute does not offend the local policy. But its absence does not prove the contrary. It is not to be exalted into an indispensable condition. The misleading word 'comity' has been responsible for much of the trouble. It has been fertile in suggesting a discretion unregulated by general principles.

The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal. 120 N.E. at 201-02 (citations to authorities omitted).

Application of the designated law may be contrary to a fundamental policy of the State or country whose law would otherwise govern either (i) because the substance of the designated law violates a fundamental principle of justice of that State or country or (ii) because it differs from a rule of that State or country that is "mandatory" in that it *must* be applied in the courts of that State or country without regard to otherwise-applicable choice of law rules of that State or country and without regard to whether the designated law is otherwise offensive. The mandatory rules concept appears in international conventions in this field, e.g., EC Convention on the Law Applicable to Contractual Obligations, although in some cases the concept is applied to authorize the *forum* state to apply *its* mandatory rules, rather than those of the State or country whose law would otherwise govern. The latter situation is not addressed by this section. (See Comment 9.)

It is obvious that a rule that is freely changeable by agreement of the parties under the law of the State or country whose law would otherwise govern cannot be construed as a mandatory rule of that State or country. This does not

mean, however, that rules that cannot be changed by agreement under that law are, for that reason alone, mandatory rules. Otherwise, contractual choice of law in the context of the Uniform Commercial Code would be illusory and redundant; the parties would be able to accomplish by choice of law no more than can be accomplished under Section 1-302, which allows variation of otherwise applicable rules by agreement. (Under Section 1-302, the parties could agree to vary the rules that would otherwise govern their transaction by substituting for those rules the rules that would apply if the transaction were governed by the law of the designated State or country without designation of governing law.) Indeed, other than cases in which a mandatory choice of law rule is established by statute (see, e.g., Sections 9-301 through 9-307, explicitly preserved in subsection (g)), cases in which courts have declined to follow the designated law solely because a rule of the State or country whose law would otherwise govern is mandatory are rare.

7. *Choice of law in the absence of contractual designation.* Subsection (d), which replaces the second sentence of former Section 1-105(1), determines which jurisdiction's law governs a transaction in the absence of an effective contractual choice by the parties. Former Section 1-105(1) provided that the law of the forum (i.e., the Uniform Commercial Code) applied if the transaction bore "an appropriate relation to this state." By using an "appropriate relation" test, rather than, for example, a "most significant relationship" test, Section 1-105(1) expressed a bias in favor of applying the forum's law. This bias, while not universally respected by the courts, was justifiable in light of the uncertainty that existed at the time of drafting as to whether the Uniform Commercial Code would be adopted by all the states; the pro-forum bias would assure that the Uniform Commercial Code would be applied so long as the transaction bore an "appropriate" relation to the forum. Inasmuch as the Uniform Commercial Code has been adopted, at least in part, in all U.S. jurisdictions, the vitality of this point is minimal in the domestic context, and international comity concerns militate against continuing the pro-forum, pro-UCC bias in transnational transactions. Whether the choice is between the law of two jurisdictions that have adopted the Uniform Commercial Code, but whose law differs (because of differences in enacted language or differing judicial interpre-

tations), or between the Uniform Commercial Code and the law of another country, there is no strong justification for directing a court to apply different choice of law principles to that determination than it would apply if the matter were not governed by the Uniform Commercial Code. Similarly, given the variety of choice of law principles applied by the states, it would not be prudent to designate only one such principle as the proper one for transactions governed by the Uniform Commercial Code. Accordingly, in cases in which the parties have not made an effective choice of law, Section 1-301(d) simply directs the forum to apply its ordinary choice of law principles to determine which jurisdiction's law governs, subject to the special rules of Section 1-301(e)(2) with regard to consumer transactions.

8. *Primacy of other Uniform Commercial Code choice of law rules.* Subsection (g), which is essentially identical to former Section 1-105(2), indicates that choice of law rules provided in the other Articles govern when applicable.

9. *Matters not addressed by this section.* As noted in Comment 1, this section is not a complete statement of conflict of laws doctrines applicable in commercial cases. Among the issues this section does not address, and leaves to other law, three in particular deserve mention. First, a forum will occasionally decline to apply the law of a different jurisdiction selected by the parties when application of that law would be contrary to a fundamental policy of the forum jurisdiction, even if it would not be contrary to a fundamental policy of the State or country whose law would govern in the absence of contractual designation. Standards for application of this doctrine relate primarily to concepts of sovereignty rather than commercial law and are thus left to the courts. Second, in determining whether to give effect to the parties' agreement that the law of a particular State or country will govern their relationship, courts must, of necessity, address some issues as to the basic validity of that agreement. These issues might relate, for example, to capacity to contract and absence of duress. This section does not address these issues. Third, this section leaves to other choice of law principles of the forum the issues of whether, and to what extent, the forum will apply the same law to the non-UCC aspects of a transaction that it applies to the aspects of the transaction governed by the Uniform Commercial Code.

§ 28:1-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) of this section or elsewhere in this subtitle, the effect of provisions of this subtitle may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this subtitle may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this subtitle requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this subtitle of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-518, § 28:2A-527, § 28:2A-528, § 28:4A-204, and § 28:5-103.

Prior Codifications. — 2001 Ed., §§ 28:1-102(3), (4), and 28:1-204(1).

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Sections 1-102(3)-(4) and 1-204(1).

Changes: This section combines the rules from subsections (3) and (4) of former Section 1-102 and subsection (1) of former Section 1-204. No substantive changes are made.

1. Subsection (a) states affirmatively at the outset that freedom of contract is a principle of the Uniform Commercial Code: “the effect” of its provisions may be varied by “agreement.” The meaning of the statute itself must be found in its text, including its definitions, and in appropriate extrinsic aids; it cannot be varied by agreement. But the Uniform Commercial Code seeks to avoid the type of interference with evolutionary growth found in pre-Code cases such as *Manhattan Co. v. Morgan*, 242 N.Y. 38, 150 N.E. 594 (1926). Thus, private parties cannot make an instrument negotiable within the meaning of Article 3 except as provided in Section 3-104; nor can they change the meaning of such terms as “bona fide purchaser,” “holder in due course,” or “due negotiation,” as used in the Uniform Commercial Code. But an agreement can change the legal consequences that would otherwise flow from the provisions of the Uniform Commercial Code. “Agreement” here includes the effect given to course of dealing, usage of trade and course of performance by Sections 1-201 and 1-303; the effect of an agreement on the rights of third parties is left to specific provisions of the Uniform Commercial Code and to supplementary principles applicable under Section 1-103. The rights of third parties under Section 9-317 when a security interest is unperfected, for example, cannot be destroyed by a clause in the security agreement.

This principle of freedom of contract is subject to specific exceptions found elsewhere in the Uniform Commercial Code and to the general exception stated here. The specific exceptions vary in explicitness: the statute of frauds found in Section 2-201, for example, does not explicitly preclude oral waiver of the requirement of a writing, but a fair reading denies enforcement to such a waiver as part of the “contract” made unenforceable; Section 9-602, on the other hand, is a quite explicit limitation on freedom of contract. Under the exception for “the obligations of good faith, diligence, reasonableness and care prescribed by [the Uniform Commercial Code],” provisions of the Uniform Commercial Code prescribing such obligations are not to be disclaimed. However, the section also recognizes the prevailing practice of having agreements set forth standards by which due diligence is measured and explicitly provides that, in the absence of a showing that the standards manifestly are unreasonable, the agreement controls. In this connection, Section 1-303 incorporating into the agreement prior course of dealing and usages of trade is of particular importance.

Subsection (b) also recognizes that nothing is stronger evidence of a reasonable time than the fixing of such time by a fair agreement between the parties. However, provision is made for disregarding a clause which whether by inadvertence or overreaching fixes a time so unreasonable that it amounts to eliminating all remedy under the contract. The parties are not required to fix the most reasonable time but may fix any time which is not obviously unfair as judged by the time of contracting.

2. An agreement that varies the effect of

provisions of the Uniform Commercial Code may do so by stating the rules that will govern in lieu of the provisions varied. Alternatively, the parties may vary the effect of such provisions by stating that their relationship will be governed by recognized bodies of rules or principles applicable to commercial transactions. Such bodies of rules or principles may include, for example, those that are promulgated by intergovernmental authorities such as UNCITRAL or Unidroit (*see, e.g., Unidroit Principles of International Commercial Contracts*), or non-legal codes such as trade codes.

3. Subsection (c) is intended to make it clear that, as a matter of drafting, phrases such as “unless otherwise agreed” have been used to avoid controversy as to whether the subject matter of a particular section does or does not fall within the exceptions to subsection (b), but absence of such words contains no negative implication since under subsection (b) the general and residual rule is that the effect of all provisions of the Uniform Commercial Code may be varied by agreement.

§ 28:1-303. Course of performance, course of dealing, and usage of trade.

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage of trade must be proved by facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) Express terms prevail over course of performance, course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to § 28:2-209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201 and § 28:2-202.

Prior Codifications. — 2001 Ed., §§ 28:1-205, 28:2-208, 28:2A-207.

Legislative history of Law 9-128. — For

legislative history of D.C. Law 9-128, see Historical and Statutory Notes following § 28:1-108.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Sections 1-205, 2-208, and Section 2A-207.

Changes from former law: This section integrates the “course of performance” concept from Articles 2 and 2A into the principles of former Section 1-205, which deals with course of dealing and usage of trade. In so doing, the section slightly modifies the articulation of the course of performance rules to fit more comfortably with the approach and structure of former Section 1-205. There are also slight modifications to be more consistent with the definition of “agreement” in former Section 1-201(3). It should be noted that a course of performance that might otherwise establish a defense to the obligation of a party to a negotiable instrument is not available as a defense against a holder in due course who took the instrument without notice of that course of performance.

1. The Uniform Commercial Code rejects both the “lay-dictionary” and the “conveyancer’s” reading of a commercial agreement. Instead the meaning of the agreement of the parties is to be determined by the language used by them and by their action, read and interpreted in the light of commercial practices and other surrounding circumstances. The measure and background for interpretation are set by the commercial context, which may explain and supplement even the language of a formal or final writing.

2. “Course of dealing,” as defined in subsection (b), is restricted, literally, to a sequence of conduct between the parties previous to the agreement. A sequence of conduct after or under the agreement, however, is a “course of performance.” “Course of dealing” may enter the agreement either by explicit provisions of the agreement or by tacit recognition.

3. The Uniform Commercial Code deals with “usage of trade” as a factor in reaching the commercial meaning of the agreement that the

parties have made. The language used is to be interpreted as meaning what it may fairly be expected to mean to parties involved in the particular commercial transaction in a given locality or in a given vocation or trade. By adopting in this context the term “usage of trade,” the Uniform Commercial Code expresses its intent to reject those cases which see evidence of “custom” as representing an effort to displace or negate “established rules of law.” A distinction is to be drawn between mandatory rules of law such as the Statute of Frauds provisions of Article 2 on Sales whose very office is to control and restrict the actions of the parties, and which cannot be abrogated by agreement, or by a usage of trade, and those rules of law (such as those in Part 3 of Article 2 on Sales) which fill in points which the parties have not considered and in fact agreed upon. The latter rules hold “unless otherwise agreed” but yield to the contrary agreement of the parties. Part of the agreement of the parties to which such rules yield is to be sought for in the usages of trade which furnish the background and give particular meaning to the language used, and are the framework of common understanding controlling any general rules of law which hold only when there is no such understanding.

4. A usage of trade under subsection (c) must have the “regularity of observance” specified. The ancient English tests for “custom” are abandoned in this connection. Therefore, it is not required that a usage of trade be “ancient or immemorial,” “universal,” or the like. Under the requirement of subsection (c) full recognition is thus available for new usages and for usages currently observed by the great majority of decent dealers, even though dissidents ready to cut corners do not agree. There is room also for proper recognition of usage agreed upon by merchants in trade codes.

5. The policies of the Uniform Commercial Code controlling explicit unconscionable contracts and clauses (Sections 1-304, 2-302) apply to implicit clauses that rest on usage of trade and carry forward the policy underlying the ancient requirement that a custom or usage must be “reasonable.” However, the emphasis is shifted. The very fact of commercial acceptance makes out a *prima facie* case that the usage is reasonable, and the burden is no longer on the usage to establish itself as being reasonable. But the anciently established policing of usage by the courts is continued to the extent necessary to cope with the situation arising if an unconscionable or dishonest practice should become standard.

6. Subsection (d), giving the prescribed effect to usages of which the parties “are or should be aware,” reinforces the provision of subsection (c) requiring not universality but only the described “regularity of observance” of the practice or method. This subsection also reinforces the point of subsection (c) that such usages may be either general to trade or particular to a special branch of trade.

7. Although the definition of “agreement” in Section 1-201 includes the elements of course of performance, course of dealing, and usage of trade, the fact that express reference is made in some sections to those elements is not to be construed as carrying a contrary intent or implication elsewhere. Compare Section 1-302(c).

8. In cases of a well-established line of usage varying from the general rules of the Uniform Commercial Code where the precise amount of the variation has not been worked out into a single standard, the party relying on the usage is entitled, in any event, to the minimum variation demonstrated. The whole is not to be disregarded because no particular line of detail has been established. In case a dominant pattern has been fairly evidenced, the party relying on the usage is entitled under this section to go to the trier of fact on the question of whether such dominant pattern has been incorporated into the agreement.

9. Subsection (g) is intended to insure that this Act’s liberal recognition of the needs of commerce in regard to usage of trade shall not be made into an instrument of abuse.

§ 28:1-304. Obligation of good faith.

Every contract or duty within this subtitle imposes an obligation of good faith in its performance and enforcement.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-203.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-203.

Changes from former law: Except for changing the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-203.

1. This section sets forth a basic principle running throughout the Uniform Commercial Code. The principle is that in commercial transactions good faith is required in the performance and enforcement of all agreements or duties. While this duty is explicitly stated in some provisions of the Uniform Commercial Code, the applicability of the duty is broader than merely these situations and applies generally, as stated in this section, to the performance or enforcement of every contract or duty within this Act. It is further implemented by Section 1-303 on course of dealing, course of performance, and usage of trade. This section

does not support an independent cause of action for failure to perform or enforce in good faith. Rather, this section means that a failure to perform or enforce, in good faith, a specific duty or obligation under the contract, constitutes a breach of that contract or makes unavailable, under the particular circumstances, a remedial right or power. This distinction makes it clear that the doctrine of good faith merely directs a court towards interpreting contracts within the commercial context in which they are created, performed, and enforced, and does not create a separate duty of fairness and reasonableness which can be independently breached.

2. “Performance and enforcement” of contracts and duties within the Uniform Commercial Code include the exercise of rights created by the Uniform Commercial Code.

§ 28:1-305. Remedies to be liberally administered.

(a) The remedies provided by this subtitle must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed, but neither consequential or special damages nor penal damages may be awarded except as specifically provided in this subtitle or by other rule of law.

(b) Any right or obligation declared by this subtitle is enforceable by action unless the provision declaring it specifies a different and limited effect.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-501.

Prior Codifications. — 2001 Ed., § 28:1-106.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-106.

Changes from former law: Other than changes in the form of reference to the Uniform Commercial Code, this section is identical to former Section 1-106.

1. Subsection (a) is intended to effect three propositions. The first is to negate the possibility of unduly narrow or technical interpretation of remedial provisions by providing that the remedies in the Uniform Commercial Code are to be liberally administered to the end stated in this section. The second is to make it clear that compensatory damages are limited to compensation. They do not include consequential or special damages, or penal damages; and the Uniform Commercial Code elsewhere makes it clear that damages must be minimized. Cf. Sections 1-304, 2-706(1), and 2-712(2). The third purpose of subsection (a) is to reject any doctrine that damages must be calculable with

mathematical accuracy. Compensatory damages are often at best approximate: they have to be proved with whatever definiteness and accuracy the facts permit, but no more. Cf. Section 2-204(3).

2. Under subsection (b), any right or obligation described in the Uniform Commercial Code is enforceable by action, even though no remedy may be expressly provided, unless a particular provision specifies a different and limited effect. Whether specific performance or other equitable relief is available is determined not by this section but by specific provisions and by supplementary principles. Cf. Sections 1-103, 2-716.

3. “Consequential” or “special” damages and “penal” damages are not defined in the Uniform Commercial Code; rather, these terms are used in the sense in which they are used outside the Uniform Commercial Code.

§ 28:1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

(Dec. 30, 1963, 77 Stat. 632, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-107.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-107.

Changes from former law: This section changes former law in two respects. First, former Section 1-107, requiring the “delivery” of a “written waiver or renunciation” merges the separate concepts of the aggrieved party’s agreement to forego rights and the manifestation of that agreement. This section separates those concepts, and explicitly requires *agreement* of the aggrieved party. Second, the revised section reflects developments in electronic commerce by providing for memorialization in an authenticated record. In this context, a party may “authenticate” a record by (i) signing a record that is a writing or (ii) attaching to or

logically associating with a record that is not a writing an electronic sound, symbol or process with the present intent to adopt or accept the record. See Sections 1-201(b)(37) and 9-102(a)(7).

1. This section makes consideration unnecessary to the effective renunciation or waiver of rights or claims arising out of an alleged breach of a commercial contract where the agreement effecting such renunciation is memorialized in a record authenticated by the aggrieved party. Its provisions, however, must be read in conjunction with the section imposing an obligation of good faith. (Section 1-304).

§ 28:1-307. Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

(Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-202.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-202.

Changes from former law: Except for minor stylistic changes; this Section is identical to former Section 1-202.

1. This section supplies judicial recognition for documents that are relied upon as trustworthy by commercial parties.

2. This section is concerned only with documents that have been given a preferred status by the parties themselves who have required their procurement in the agreement, and for this reason the applicability of the section is limited to actions arising out of the contract

that authorized or required the document. The list of documents is intended to be illustrative and not exclusive.

3. The provisions of this section go no further than establishing the documents in question as prima facie evidence and leave to the court the ultimate determination of the facts where the accuracy or authenticity of the documents is questioned. In this connection the section calls for a commercially reasonable interpretation.

4. Documents governed by this section need not be writings if records in another medium are generally relied upon in the context.

§ 28:1-308. Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs, promises performance, or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice,” “under protest,” or the like are sufficient.

(b) Subsection (a) of this section does not apply to an accord and satisfaction.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(b)(2), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-207.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-207.

Changes from former law: This section is identical to former Section 1-207.

1. This section provides machinery for the continuation of performance along the lines contemplated by the contract despite a pending dispute, by adopting the mercantile device of going ahead with delivery, acceptance, or payment “without prejudice,” “under protest,” “under reserve,” “with reservation of all our rights,” and the like. All of these phrases completely reserve all rights within the meaning of this section. The section therefore contemplates that limited as well as general reservations and acceptance by a party may be made “subject to satisfaction of our purchaser,” “subject to acceptance by our customers,” or the like.

2. This section does not add any new requirement of language of reservation where not already required by law, but merely provides a specific measure on which a party can rely as that party makes or concurs in any interim adjustment in the course of performance. It does not affect or impair the provisions of this

Act such as those under which the buyer’s remedies for defect survive acceptance without being expressly claimed if notice of the defects is given within a reasonable time. Nor does it disturb the policy of those cases which restrict the effect of a waiver of a defect to reasonable limits under the circumstances, even though no such reservation is expressed.

The section is not addressed to the creation or loss of remedies in the ordinary course of performance but rather to a method of procedure where one party is claiming as of right something which the other believes to be unwarranted.

3. Subsection (b) states that this section does not apply to an accord and satisfaction. Section 3-311 governs if an accord and satisfaction is attempted by tender of a negotiable instrument as stated in that section. If Section 3-311 does not apply, the issue of whether an accord and satisfaction has been effected is determined by the law of contract. Whether or not Section 3-311 applies, this section has no application to an accord and satisfaction.

§ 28:1-309. Option to accelerate at will.

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral at will or when the party deems itself insecure, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

(Dec. 30, 1963, 77 Stat. 637, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Prior Codifications. — 2001 Ed., § 28:1-208.

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT

Source: Former Section 1-208.

Changes from former law: Except for minor stylistic changes, this section is identical to former Section 1-208.

1. The common use of acceleration clauses in

many transactions governed by the Uniform Commercial Code, including sales of goods on credit, notes payable at a definite time, and secured transactions, raises an issue as to the effect to be given to a clause that seemingly

grants the power to accelerate at the whim and caprice of one party. This section is intended to make clear that despite language that might be so construed and which further might be held to make the agreement void as against public policy or to make the contract illusory or too indefinite for enforcement, the option is to be exercised only in the good faith belief that the

prospect of payment or performance is impaired.

Obviously this section has no application to demand instruments or obligations whose very nature permits call at any time with or without reason. This section applies only to an obligation of payment or performance which in the first instance is due at a future date.

§ 28:1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

(Apr. 27, 2013, D.C. Law 19-299, § 2, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:1-301.

UNIFORM COMMERCIAL CODE COMMENT.

Source: Former Section 1-209 [not adopted in D.C.].

Changes from former law: This section is substantively identical to former Section 1-209. The language in that section stating that it “shall be construed as declaring the law as it existed prior to the enactment of this section and not as modifying it” has been deleted.

1. Billions of dollars of subordinated debt are held by the public and by institutional investors. Commonly, the subordinated debt is subordinated on issue or acquisition and is evidenced by an investment security or by a negotiable or non-negotiable note. Debt is also sometimes subordinated after it arises, either by agreement between the subordinating creditor and the debtor, by agreement between two creditors of the same debtor, or by agreement of all three parties. The subordinated creditor may be a stockholder or other “insider” interested in the common debtor; the subordinated debt may consist of accounts or other rights to payment not evidenced by any instrument. All such cases are included in the terms “subordinated obligation,” “subordination,” and “subordinated creditor.”

2. Subordination agreements are enforceable between the parties as contracts; and in the bankruptcy of the common debtor dividends otherwise payable to the subordinated creditor

are turned over to the superior creditor. This “turn-over” practice has on occasion been explained in terms of “equitable lien,” “equitable assignment,” or “constructive trust,” but whatever the label the practice is essentially an equitable remedy and does not mean that there is a transaction “that creates a security interest in personal property... by contract” or a “sale of accounts, chattel paper, payment intangibles, or promissory notes” within the meaning of Section 9-109. On the other hand, nothing in this section prevents one creditor from assigning his rights to another creditor of the same debtor in such a way as to create a security interest within Article 9, where the parties so intend.

3. The enforcement of subordination agreements is largely left to supplementary principles under Section 1-103. If the subordinated debt is evidenced by a certificated security, Section 8-202(a) authorizes enforcement against purchasers on terms stated or referred to on the security certificate. If the fact of subordination is noted on a negotiable instrument, a holder under Sections 3-302 and 3-306 is subject to the term because notice precludes him from taking free of the subordination. Sections 3-302(3)(a), 3-306, and 8-317 severely limit the rights of levying creditors of a subordinated creditor in such cases.

ARTICLE 2. SALES.

Part 1. Short Title, General Construction and Subject Matter

Sec.

- 28:2-103. Definitions and index of definitions.
28:2-104. Definitions: "merchant"; "between merchants"; "financing agency".

Part 2. Form, Formation and Readjustment of Contract

- 28:2-202. Final written expression: parol or extrinsic evidence.
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- 28:2-310. Open time for payment or running of credit; authority to ship under reservation.
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- 28:2-503. Manner of seller's tender of delivery.
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- 28:2-605. Waiver of buyer's objections by failure to particularize.

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- 28:2-705. Seller's stoppage of delivery in transit or otherwise.

Part 1. Short Title, General Construction and Subject Matter.

§ 28:2-103. Definitions and index of definitions.

- (1) In this article unless the context otherwise requires:
 - (a) "Buyer" means a person who buys or contracts to buy goods.
 - (b) Repealed.
 - (c) "Receipt" of goods means taking physical possession of them.
 - (d) "Seller" means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:
 - "Acceptance". Section 28:2-606.
 - "Banker's credit". Section 28:2-325.
 - "Between merchants". Section 28:2-104.
 - "Cancellation". Section 28:2-106(4).
 - "Commercial unit". Section 28:2-105.
 - "Confirmed credit". Section 28:2-325.
 - "Conforming to contract". Section 28:2-106.
 - "Contract for sale". Section 28:2-106.
 - "Cover". Section 28:2-712.
 - "Entrusting". Section 28:2-403.
 - "Financing agency". Section 28:2-104.
 - "Future goods". Section 28:2-105.
 - "Goods". Section 28:2-105.
 - "Identification". Section 28:2-501.
 - "Installment contract". Section 28:2-612.
 - "Letter of Credit". Section 28:2-325.
 - "Lot". Section 28:2-105.

“Merchant”. Section 28:2-104.

“Overseas”. Section 28:2-323.

“Person in position of seller”. Section 28:2-707.

“Present sale”. Section 28:2-106.

“Sale”. Section 28:2-106.

“Sale on approval”. Section 28:2-326.

“Sale or return”. Section 28:2-326.

“Termination”. Section 28:2-106.

(3) Control as provided in § 28:7-106 and the following definitions in other articles apply to this article:

“Check”. Section 28:3-104.

“Consignee”. Section 28:7-102.

“Consignor”. Section 28:7-102.

“Consumer goods”. Section 28:9-102.

“Dishonor”. Section 28:3-502.

“Draft”. Section 28:3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 639, Pub. L. 88-243, § 1; Oct. 26, 2000, D.C. Law 13-201, § 201(c)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 3(a), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-103, § 28:6-102, and § 28:7-102.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299 repealed (1)(b), defining “Good faith”; and added “Control as provided in § 28:7-106 and” at the beginning of the introductory paragraph of (3).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-104. Definitions: “merchant”; “between merchants”; “financing agency”.

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) “Financing agency” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “Financing agency” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 28:2-707).

(3) “Between merchants” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

(Dec. 30, 1963, 77 Stat. 640, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103, § 28:2A-103, and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted

“accompany or are associated with” for “accompany” in the first sentence of (2).

Legislative history of Law 19-299. — See note to § 28:2-103.

Part 2. Form, Formation and Readjustment of Contract.

§ 28:2-202. Final written expression: parol or extrinsic evidence.

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) by course of performance, course of dealing, or usage of trade (§ 28:1-303); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

(Dec. 30, 1963, 77 Stat. 642, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-316 and § 28:2-326.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-208. Course of performance or practical construction.

Repealed.

(Dec. 30, 1963, 77 Stat. 644, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(d), 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:2-202.

Editor’s notes. — For present law, see § 28:1-303.

Part 3. General Obligation and Construction of Contract.

§ 28:2-310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 28:2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this section then payment is due regardless of where the goods are to be received at the time and place at which the buyer is to receive delivery of the tangible documents or at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

(Dec. 30, 1963, 77 Stat. 646, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(e), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was

adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-323. Form of bill of lading required in overseas shipment; "overseas".

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 28:2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require

payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

(Dec. 30, 1963, 77 Stat. 651, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103, § 28:2-319, and § 28:2-503.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a

tangible bill of lading" for "a bill of lading" in the first sentence of (2).

Legislative history of Law 19-299. — See note to § 28:2-310.

Part 4. Title, Creditors and Good Faith Purchasers.

§ 28:2-401. Passing of title; reservation for security; limited application of this section.

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 28:2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this subtitle. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents, and, if the

seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

(Dec. 30, 1963, 77 Stat. 653, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201, § 28:2-106, § 28:9-102, § 28:9-109, § 28:9-110, and § 28:9-309.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (3).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revi-

sion Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Part 5. Performance.

§ 28:2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a record directing to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains

on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form except as provided in this article with respect to bills of lading in a set (subsection (2) of section 28:2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

(Dec. 30, 1963, 77 Stat. 655, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-319 and § 28:2-509.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299, in (4)(b), substituted “record directing” for “written direction to” and inserted “except as otherwise provided in Article 9” following “seasonably objects, and”; and substituted “accompanying or associated with” for “accompanying” in (5)(b).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:2-505. Seller’s shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller’s expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession or control of the goods as security but except in a case of conditional delivery (subsection (2) of section 28:2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document.

(Dec. 30, 1963, 77 Stat. 656, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-201 and § 28:2-509.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted

“possession or control” for “possession” twice in (1)(b).

Legislative history of Law 19-299. — See note to § 28:2-503.

§ 28:2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

(Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(j), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 deleted “on its face” following “regular” at the end of (2). **Legislative history of Law 19-299.** — See note to § 28:2-503.

§ 28:2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 28:2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of possession or control of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of possession or control of a non-negotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of section 28:2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 28:2-327) and on effect of breach on risk of loss (section 28:2-510).

(Dec. 30, 1963, 77 Stat. 657, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(k), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “receipt of possession or control of” for “receipt of” in (2)(a) and (2)(c); and substituted “direc-

tion to deliver in a record” for “written direction to deliver” in (2)(c).

Legislative history of Law 19-299. — See note to § 28:2-503.

Part 6. Breach, Repudiation and Excuse.

§ 28:2-605. Waiver of buyer’s objections by failure to particularize.

(1) The buyer’s failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payments against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

(Dec. 30, 1963, 77 Stat. 660, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 3(1), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “apparent in” for “apparent on the face of” in (2).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Part 7. Remedies.

§ 28:2-705. Seller’s stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 28:2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgement to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(Dec. 30, 1963, 77 Stat. 665, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, §§ 3(m), 3(n), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-702, § 28:2-703, § 28:2-707, § 28:7-403, and § 28:7-504.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “a warehouse” for “warehouseman” in (2)(c).

The 2013 amendment by D.C. Law 19-299 inserted “of possession or control” following “surrender” in (3)(c).

Legislative history of Law 19-299. — Law

19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Legislative history of Law 19-299. — See note to § 28:2-705.

ARTICLE 2A. LEASES.

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28:2A-527. Lessor's rights to dispose of goods.

28:2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

Part 1. General Provisions.

§ 28:2A-103. Definitions and index of definitions.

(a) In this article unless the context otherwise requires:

(1) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods

of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed \$25,000.

(6) "Fault" means wrongful act, omission, breach, or default.

(7) "Finance lease" means a lease with respect to which:

(A) The lessor does not select, manufacture, or supply the goods;

(B) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(C) One of the following occurs:

(i) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(ii) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(iii) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimer of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(iv) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or

as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(8) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 28:2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(15) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(17) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this article and the sections in which they appear are:

"Accessions". § 28:2A-310(a).

"Construction mortgage". § 28:2A-309(a)(4).

"Encumbrance". § 28:2A-309(a)(5).

"Fixture filing". § 28:2A-309(a)(2).

"Fixtures". § 28:2A-309(a)(1).

"Purchase money lease". § 28:2A-309(a)(3).

(c) The following definitions in other articles apply to this article:

"Account". § 28:9-102(a)(2).

"Between merchants". § 28:2-104(3).

"Buyer". § 28:2-103(1)(a).

"Chattel paper". § 28:9-102(a)(11).

"Consumer goods". § 28:9-102(a)(23).

"Document." § 28:9-102(a)(30).

"Entrusting". § 28:2-403(3).

"General intangibles". § 28:9-102(a)(42).

"Instrument". § 28:9-102(a)(47).

"Merchant". § 28:2-104(1).

"Mortgage". § 28:9-102(a)(55).

"Pursuant to commitment". § 28:9-102(a)(69).

“Receipt”. § 28:2-103(1)(c).

“Sale”. § 28:2-106(1).

“Sale on approval”. § 28:2-326.

“Sale or return”. § 28:2-326.

“Seller”. § 28:2-103(1)(d).

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Oct. 26, 2000, D.C. Law 13-201, § 201(d)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 4(a), 60 DCR 2634; May 1, 2013, D.C. Law 19-302, § 3, 60 DCR 2688.)

Section references. — This section is referenced in § 28:7-102 and § 28:9-102.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299 substituted “acquiring goods” for “receiving goods” in the second sentence of (a)(1) and (a)(15); and deleted the phrase “Good faith”. § 28:2-103(1)(b)” in (c).

The 2013 amendment by D.C. Law 19-302 substituted “§ 28:9-102(a)(69)” for “§ 28:9-102(a)(68)” in the definition of “Pursuant to commitment” in (c).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Legislative history of Law 19-302. — Law 19-302, the “Uniform Commercial Code Article 9 Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-222. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 5, 2013, it was assigned Act No. 19-669 and transmitted to Congress for its review. D.C. Law 19-302 became effective on May 1, 2013.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Part 2. Formation and Construction of Lease Contract.

§ 28:2A-207. Course of performance or practical construction.

Repealed.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(b), 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned

Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Editor’s notes. — For present law, see § 28:1-303.

Part 5. Default.

Subpart A—In General.

§ 28:2A-501. Default: procedure.

(a) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

(b) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this Article, as provided in the lease agreement.

(c) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

(d) Except as otherwise provided in § 28:1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (b) and (c) of this section are cumulative.

(e) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this part does not apply.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; May 16, 1995, D.C. Law 10-255, § 22, 41 DCR 5193; July 25, 1995, D.C. Law 11-30, § 7(d), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-255, § 27(rr), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 4(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-303.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “§ 28:1-305(a)” for “§ 28:1-106” in (d).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revi-

sion Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Subpart B—Default by Lessor.

§ 28:2A-514. Waiver of lessee's objections.

(a) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(1) If, stated seasonably, the lessor or the supplier could have cured it (§ 28:2A-513); or

(2) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(d), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted

“apparent in the documents” for “apparent on the face of the documents” in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-518. Cover; substitute goods.

(a) After default by a lessor under the lease contract of the type described in § 28:2A-508(a), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-302 and § 28:2A-503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreements, of the rent under the new lease agreement applicable to the period of the new lease which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

(c) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and § 28:2A-519 governs.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(e), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-508 and § 28:2A-519.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “§ 28:1-302” for “§ 28:1-102(3)” in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-519. Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-102(b) and 28:2A-503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under § 28:2A-518(b), or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease

term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(b) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(c) Except as otherwise agreed, if the lessee has accepted goods and given notification (§ 28:2A-516(c)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(d) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-507, § 28:2A-508, and § 28:2A-518.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted

“§ 28:1-302(2)” for “§ 28:1-102(3)” near the beginning of (a).

Legislative history of Law 19-299. — See note to § 28:2A-501.

Subpart C—Default by Lessee.

§ 28:2A-526. Lessor's stoppage of delivery in transit or otherwise.

(a) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(b) In pursuing its remedies under subsection (a) of this section, the lessor may stop delivery until:

- (1) Receipt of the goods by the lessee;
- (2) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- (3) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(c)(1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(3) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-504, § 28:2A-523, § 28:2A-527, § 28:7-403, and § 28:7-504.

amendment by D.C. Law 19-299 substituted “a warehouse” for “warehouseman” in (b)(3).

Legislative history of Law 19-299. — See note to § 28:2A-501.

Effect of amendments. — The 2013

§ 28:2A-527. Lessor’s rights to dispose of goods.

(a) After a default by a lessee under the lease contract of the type described in § 28:2A-523(a) or § 28:2A-523(c) or after the lessor refuses to deliver or takes possession of goods (§ 28:2A-525 or § 28:2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§ 28:1-302 and § 28:2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee’s default.

(c) If the lessor’s disposition is by lease agreement that for any reason does not qualify for treatment under subsection (b) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and § 28:2A-528 governs.

(d) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(e) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee’s security interest (§ 28:2A-508(e)).

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; July 25, 1995, D.C. Law 11-30, § 7(e), 42 DCR 1547; Apr. 27, 2013, D.C. Law 19-299, § 4(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-304, § 28:2A-508, § 28:2A-523, § 28:2A-524, § 28:2A-525, § 28:2A-528, and § 28:2A-529.

Effect of amendments. — The 2013

amendment by D.C. Law 19-299 substituted “§ 28:1-302” for “§ 28:1-102(3)” in (b).

Legislative history of Law 19-299. — See note to § 28:2A-501.

§ 28:2A-528. Lessor’s damages for nonacceptance, failure to pay, repudiation, or other default.

(a) Except as otherwise provided with respect to damages liquidated in the lease agreement (§ 28:2A-504) or otherwise determined pursuant to agreement of the parties (§§ 28:1-302 and 28:2A-503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under § 28:2A-527(b), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in § 28:2A-523(c)(1), or, if agreed, for other default of the lessee (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under § 28:2A-530, less expenses saved in consequence of the lessee’s default.

(b) If the measure of damages provided in subsection (a) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under § 28:2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

(July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 27, 2013, D.C. Law 19-299, § 4(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:2A-507, § 28:2A-523, § 28:2A-527, and § 28:2A-529.

Effect of amendments. — The 2013

amendment by D.C. Law 19-299 substituted “§ 28:1-302” for “§ 28:1-102(3)” in (a).

Legislative history of Law 19-299. — See note to § 28:2A-501.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

Part 1. General Provisions and Definitions

Sec.
28:3-103. Definitions.

Sec.
28:3-106. Unconditional promise or order.
28:3-116. Joint and several liability; contribution.

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|---|---|
| Sec. | Sec. |
| 28:3-119. Notice of right to defend action. | 28:3-419. Instruments signed for accommodation. |

Part 3. Enforcement of Instruments

- 28:3-305. Defenses and claims in recoupment.
 28:3-309. Enforcement of lost, destroyed, or stolen instrument.
 28:3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

Part 4. Liability of Parties

- 28:3-416. Transfer warranties.
 28:3-417. Presentment warranties.

Part 6. Discharge and Payment

- 28:3-602. Payment.
 28:3-604. Discharge by cancellation or renunciation.
 28:3-605. Discharge of secondary obligors.

*Part 1. General Provisions and Definitions.***§ 28:3-103. Definitions.**

(a) In this article, the term:

- (1) "Acceptor" means a drawee who has accepted a draft.
- (2) "Consumer account" means an account established by an individual primarily for personal, family, or household purposes.
- (3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.
- (4) "Drawee" means a person ordered in a draft to make payment.
- (5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.
- (6) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.
- (7) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.
- (8) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Article 4.
- (9) "Party" means a party to an instrument.
- (10) "Principal obligor", with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this article.
- (11) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.
- (12) "Prove" with respect to a fact means to meet the burden of establishing the fact under § 28:1-201(b)(8).

(13) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(14) "Remotely created consumer item" means an item drawn on a consumer account, which is not created by the payor bank and does not bear a handwritten signature purporting to be the signature of the drawer.

(15) "Secondary obligor", with respect to an instrument, means:

(A) An indorser or an accommodation party;

(B) A drawer having the obligation described in § 28:3-414(d); or

(C) Any other party to the instrument that has recourse against another party to the instrument pursuant to § 28:3-116(b).

(b) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 28:3-409.
"Accommodated party".	Section 28:3-419.
"Accommodation party".	Section 28:3-419.
"Account".	Section 28:4-104.
"Alteration".	Section 28:3-407.
"Anomalous indorsement".	Section 28:3-205.
"Blank indorsement".	Section 28:3-205.
"Cashier's check".	Section 28:3-104.
"Certificate of deposit".	Section 28:3-104.
"Certified check".	Section 28:3-409.
"Check".	Section 28:3-104.
"Consideration".	Section 28:3-303.
"Draft".	Section 28:3-104.
"Holder in due course".	Section 28:3-302.
"Incomplete instrument".	Section 28:3-115.
"Indorsement".	Section 28:3-204.
"Indorser".	Section 28:3-204.
"Instrument".	Section 28:3-104.
"Issue".	Section 28:3-105.
"Issuer".	Section 28:3-105.
"Negotiable instrument".	Section 28:3-104.
"Negotiation".	Section 28:3-201.
"Note".	Section 28:3-104.
"Payable at a definite time".	Section 28:3-108.
"Payable on demand".	Section 28:3-108.
"Payable to bearer".	Section 28:3-109.
"Payable to order".	Section 28:3-109.
"Payment".	Section 28:3-602.
"Person entitled to enforce".	Section 28:3-301.
"Presentment".	Section 28:3-501.
"Reacquisition".	Section 28:3-207.
"Special indorsement".	Section 28:3-205.
"Teller's check".	Section 28:3-104.
"Transfer of instrument".	Section 28:3-203.

"Traveler's check".	Section 28:3-104.
"Value".	Section 28:3-303.
(c) The following definitions in other articles apply to this article:	
"Banking day".	Section 28:4-104.
"Clearing house".	Section 28:4-104.
"Collecting bank".	Section 28:4-105.
"Depository bank".	Section 28:4-105.
"Documentary draft".	Section 28:4-104.
"Intermediary bank".	Section 28:4-105.
"Item".	Section 28:4-104.
"Payor bank".	Section 28:4-105.
"Suspends payments".	Section 28:4-104.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 672, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:4-104 and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a); added the definition of "Account" in (b); and deleted the definition of "Bank" in (c).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revi-

sion Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-106. Unconditional promise or order.

(a) Except as provided in this section, for the purposes of section 28:3-104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of section 28:3-104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject

to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of section 28:3-104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

(Dec. 30, 1963, 77 Stat. 674, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-302.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “record” for “writing” throughout (a) and (b).

Legislative history of Law 19-299. — See note to § 28:3-103.

§ 28:3-116. Joint and several liability; contribution.

Repealed.

(Mar. 23 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(d), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103.

Legislative history of Law 19-299. — See note to § 28:3-103.

§ 28:3-119. Notice of right to defend action.

In an action for breach of an obligation for which a third person is answerable over pursuant to this article or Article 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the 2 litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(e), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “notice of the litigation in a record” for “written notice of the litigation” in the first sentence.

Legislative history of Law 19-299. — See note to § 28:3-103.

Part 3. Enforcement of Instruments.

§ 28:3-305. Defenses and claims in recoupment.

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) A defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality

of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

(2) A defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) A claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in subsection (a)(2) of this section or claims in recoupment stated in subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (section 28:3-306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this article requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) The instrument has the same effect as if the instrument included such a statement;

(2) The issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) The extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

(f) This section is subject to law other than this article that establishes a different rule for consumer transactions.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-302, § 28:4-207, and § 28:9-403.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “otherwise provided in this section” for “stated in subsection (b) of this section” in (a); and added (e) and (f).

Legislative history of Law 19-299. — Law

19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-309. Enforcement of lost, destroyed, or stolen instrument.

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) The person seeking to enforce the instrument:

(A) Was entitled to enforce the instrument when loss of possession occurred; or

(B) Has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) The loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under subsection (a) of this section must prove the terms of the instrument and the person’s right to enforce the instrument. If that proof is made, section 28:3-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-301 and § 28:3-312.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a).

Legislative history of Law 19-299. — See note to § 28:3-305.

§ 28:3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) For the purposes of this section, the term:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a statement made in a record, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to § 28:4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b)(4) of this section and the check is presented for payment by a

person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or § 28:3-309.

(Apr. 9, 1997, D.C. Law 11-237, § 2(b), 44 DCR 920; Apr. 27, 2013, D.C. Law 19-299, § 5(h), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "a statement, made in a record" for "a written statement, made".

Legislative history of Law 19-299. — See note to § 28:3-305.

Part 4. Liability of Parties.

§ 28:3-416. Transfer warranties.

(a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

- (1) The warrantor is a person entitled to enforce the instrument;
- (2) All signatures on the instrument are authentic and authorized;
- (3) The instrument has not been altered;
- (4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;
- (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and
- (6) With respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under subsection (a) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(i), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(6); and made related changes.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-417. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered;

(3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28:3-404 or 28:3-405 or the drawer is precluded under section 28:3-406 or 28:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor

is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (b) or (d) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Dec. 30, 1963, 77 Stat. 685, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(j), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-418.

Legislative history of Law 19-299. — See note to § 28:3-416.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(4); and made related changes.

§ 28:3-419. Instruments signed for accommodation.

(a) If an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation”.

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in section 28:3-605, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather

than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(d-1) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(e) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

(Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(k), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103, § 28:3-415, and § 28:3-605. amendment by D.C. Law 19-299 added (d-1); and rewrote (e).

Effect of amendments. — The 2013 **Legislative history of Law 19-299.** — See note to § 28:3-416.

Part 6. Discharge and Payment.

§ 28:3-602. Payment.

(a) Subject to subsection (e) of this section, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument to a person entitled to enforce the instrument.

(b) Subject to subsection (e) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and provides an address at which subsequent payments are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of subsection

(c) of this section even if the party obliged to pay the note has received a notification under this section.

(c) Subject to subsection (e) of this section, to the extent of a payment under subsections (a) or (b) of this section, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under § 28:3-306 by another person.

(d) Subject to subsection (e) of this section, a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under subsection (b) of this section after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under subsections (a) through (d) of this section if:

(1) A claim to the instrument under § 28:3-306 is enforceable against the party receiving payment and either payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or, in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed", with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

(Dec. 30, 1963, 77 Stat. 691, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(l), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revi-

sion Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:3-604. Discharge by cancellation or renunciation.

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

(c) In this section, “signed”, with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(m), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “record” for “writing” in (a); and added (c). **Legislative history of Law 19-299.** — See note to § 28:3-602.

§ 28:3-605. Discharge of secondary obligors.

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor’s recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor under this article.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor’s recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may:

(A) Perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended; or

(B) Treat the time for performance of its obligations as having been extended correspondingly; except, that the time may not be treated as having been extended correspondingly if the terms of the extension permit the person entitled to enforce the instrument to retain the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this article.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under paragraph (2) of this subsection, the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed under Article 9 or other law to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under subsection (a)(3), (b), (c), or (d) of this section unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under § 28:3-419(c) that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the

instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) The person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) The recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in subsection (i) of this section, a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

(Dec. 30, 1963, 77 Stat. 692, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 5(n), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-419.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section.

Legislative history of Law 19-299. — See note to § 28:3-602.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

Part 1. General Provisions and Definitions

Sec.

28:4-104. Definitions and index of definitions.

28:4-105. Definitions of types of banks.

Part 2. Collection of Items: Depositary and Collecting Banks

28:4-207. Transfer warranties.

28:4-208. Presentment warranties.

28:4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

Sec.

28:4-212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.

28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

Part 4. Relationship Between Payor Bank and Its Customers

28:4-403. Customer's right to stop payment; burden of proof of loss.

Part 1. General Provisions and Definitions.

§ 28:4-104. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires, the term:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of a day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearing house" means an association of banks or other payors regularly clearing items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28:8-102) or instructions for uncertificated securities (section 28:8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in section 28:3-104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A or a credit or debit card slip.

(10) "Midnight deadline", with respect to a bank, means midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) "Suspends payments", with respect to a bank, means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment".	Section 28:4-110.
"Collecting bank".	Section 28:4-105.
"Depository bank".	Section 28:4-105.
"Intermediary bank".	Section 28:4-105.
"Payor bank".	Section 28:4-105.
"Presenting bank".	Section 28:4-105.
"Presentment notice".	Section 28:4-110.

(c) “Control” as provided in § 28:7-106 and the following definitions in other articles apply to this article:

“Acceptance”.	Section 28:3-409.
“Alteration”.	Section 28:3-407.
“Cashier’s check”.	Section 28:3-104.
“Certificate of deposit”.	Section 28:3-104.
“Certified check”.	Section 28:3-409.
“Check”.	Section 28:3-104.
“Holder in due course”.	Section 28:3-302.
“Instrument”.	Section 28:3-104.
“Notice of dishonor”.	Section 28:3-503.
“Order”.	Section 28:3-103.
“Ordinary care”.	Section 28:3-103.
“Person entitled to enforce”.	Section 28:3-301.
“Presentment”.	Section 28:3-501.
“Promise”.	Section 28:3-103.
“Prove”.	Section 28:3-103.
“Record”.	Section 28:3-103.
“Remotely created consumer item”.	Section 28:3-103.
“Teller’s check”.	Section 28:3-104.
“Unauthorized signature”.	Section 28:3-403.

(d) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 696, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 9, 1997, D.C. Law 11-240, § 3(d), 44 DCR 1087; Apr. 27, 2013, D.C. Law 19-299, § 6(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103, § 28:4A-105, and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 deleted the definition of “Bank” in (b); in (c), added “Control” as provided in § 28:7-106 and” at the beginning of the introductory language, deleted the definition of “Good faith”; and added the definitions of “Record” and “Remotely created consumer item.”

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:4-105. Definitions of types of banks.

In this article, the term:

(1) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

(2) “Depository bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) “Payor bank” means a bank that is the drawee of a draft.

(4) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depository or payor bank.

(5) “Collecting bank” means a bank handling an item for collection except the payor bank.

(6) “Presenting bank” means a bank presenting an item except a payor bank.

(Dec. 30, 1963, 77 Stat. 697, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-103 and § 28:4-104.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section heading, which read “Bank”; “deposi-

tary bank”; “payor bank”; “intermediary bank”; “collecting bank”; “presenting bank”.

Legislative history of Law 19-299. — See note to § 28:4-104.

Part 2. Collection of Items: Depositary and Collecting Banks.

§ 28:4-207. Transfer warranties.

(a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

- (1) The warrantor is a person entitled to enforce the item;
- (2) All signatures on the item are authentic and authorized;
- (3) The item has not been altered;

(4) The item is not subject to a defense or claim in recoupment (section 28:3-305(a)) of any party that can be asserted against the warrantor;

(5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in sections 28:3-115 and 28:3-407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made “without recourse” or otherwise disclaiming liability.

(c) A person to whom the warranties under subsection (a) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in subsection (a) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of

warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Dec. 30, 1963, 77 Stat. 699, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(d), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(6); and made related changes.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:4-208. Presentment warranties.

(a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) The draft has not been altered;

(3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) With respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under subsection (a) of this section based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under section 28:3-404 or 28:3-405 or the drawer is

precluded under section 28:3-406 or 28:4-406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in subsections (a) and (d) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(e), 60 DCR 2634.)

Section references. — This section is referenced in § 28:4-302 and § 28:4-406.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (a)(4); and made related changes.

Legislative history of Law 19-299. — See note to § 28:4-207.

§ 28:4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (section 28:9-203(b)(e)(A));

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

(Dec. 30, 1963, 77 Stat. 700, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Oct. 26, 2000, D.C. Law 13-201, § 201(e), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 6(f), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-109, § 28:9-203, § 28:9-309, and § 28:9-322.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299

inserted “possession or control of the” preceding “accompanying documents” in the introductory paragraph of (c).

Legislative history of Law 19-299. — See

note to § 28:4-207.

§ 28:4-212. Presentment by notice of item not payable by, through, or at bank; liability of drawer or indorser.

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 28:3-501 by the close of the bank’s next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under section 28:3-501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

(Dec. 30, 1963, 77 Stat. 701, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(g), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “record providing notice” for “written notice” in (a).

Legislative history of Law 19-299. — See note to § 28:4-207.

§ 28:4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the

settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it

(1) Returns the item; or

(2) Returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or

(3) Sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when, for purposes of dishonor, it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) As to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

(Dec. 30, 1963, 77 Stat. 704, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-502 and § 28:4-214.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (a)(2); and added (a)(3).

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revi-

sion Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Part 4. Relationship Between Payor Bank and Its Customers.

§ 28:4-403. Customer's right to stop payment; burden of proof of loss.

(a) A customer, or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in section 28:4-303. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for 6 months, but it lapses after 14 calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional

6-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under section 28:4-402.

(Dec. 30, 1963, 77 Stat. 705, Pub. L. 88-243, § 1; Mar. 23, 1995, D.C. Law 10-249, § 2(e), 42 DCR 467; Apr. 27, 2013, D.C. Law 19-299, § 6(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:3-418 and § 28:4-401.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299, in (b), substituted “in a record” for “in writing” in the first sentence and substituted “by a record” for “by a writing” in the second sentence.

Legislative history of Law 19-299. — Law

19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

ARTICLE 4A. FUNDS TRANSFERS.

Part 1. Subject Matter and Definitions

Sec.

28:4A-105. Other definitions.

28:4A-106. Time payment order is received.

28:4A-108. Relationship to Electronic Fund Transfers Act.

Part 2. Issue and Acceptance of Payment Order

Sec.

28:4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

Part 1. Subject Matter and Definitions.

§ 28:4A-105. Other definitions.

(a) In this article:

(1) “Authorized account” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) “Customer” means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) “Funds-transfer business day” of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and

transmittal of payment orders and cancellations and amendments of payment orders.

(5) “Funds-transfer system” means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) Repealed.

(7) “Prove” with respect to a fact means to meet the burden of establishing the fact under § 28:1-201(b)(8).

(b) Other definitions applying to this article and the sections in which they appear are:

“Acceptance”.	§ 28:4A-209
“Beneficiary”.	§ 28:4A-103
“Beneficiary’s bank”.	§ 28:4A-103
“Executed”.	§ 28:4A-301
“Execution date”.	§ 28:4A-301
“Funds transfer”.	§ 28:4A-104
“Funds-transfer system rule”.	§ 28:4A-501
“Intermediary bank”.	§ 28:4A-104
“Originator”.	§ 28:4A-104
“Originator’s bank”.	§ 28:4A-104
“Payment by beneficiary’s bank to beneficiary”.	§ 28:4A-405
“Payment by originator to beneficiary”.	§ 28:4A-406
“Payment by sender to receiving bank”.	§ 28:4A-403
“Payment date”.	§ 28:4A-401
“Payment order”.	§ 28:4A-103
“Receiving bank”.	§ 28:4A-103
“Security procedure”.	§ 28:4A-201
“Sender”.	§ 28:4A-103

(c) The following definitions in Article 4 apply to this article:

“Clearing house”.	§ 28:4-104
“Item”.	§ 28:4-104
“Suspends payments”.	§ 28:4-104

(d) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595; Apr. 27, 2013, D.C. Law 19-299, § 7(a), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 repealed (a)(6), which read: “Good faith’ means honesty in fact and the observance of reasonable commercial standards of fair dealing”; and substituted “under § 28:1-201(b)(8)” for “(§ 28:1-201(8))” in (a)(7).

Legislative history of Law 19-299. — Law

19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:4A-106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in § 28:1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

(b) If this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated, unless the contrary is stated in this article.

(Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595; Apr. 27, 2013, D.C. Law 19-299, § 7(b), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “§ 28:1-202” for “§ 28:1-201(27)” in the first sentence of (a).

Legislative history of Law 19-299. — See note to § 28:4A-105.

§ 28:4A-108. Relationship to Electronic Fund Transfers Act.

(a) Except as otherwise provided in subsection (b) of this section, this article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act, approved November 10, 1978 (92 Stat. 3728; 15 U.S.C. § 1693 et seq.).

(b) This article applies to a funds transfer that is a remittance transfer as defined in section 919(g)(2) of the Electronic Fund Transfer Act, approved July 21, 2010 (124 Stat. 2065; 15 U.S.C. § 1693o-1(g)(2)), unless the remittance transfer is an electronic fund transfer as defined in section 903(7) of the Electronic Fund Transfer Act, approved November 10, 1978 (92 Stat. 3728; 15 U.S.C. § 1693a(7)).

(c) In the event of an inconsistency between a provision of this article and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs to the extent of the inconsistency.

(Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595; Apr. 27, 2013, D.C. Law 19-299, § 7(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:4A-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote the section, which read: “This article does not apply to a funds transfer any part of which is gov-

erned by the Electronic Fund Transfer Act of 1978 (title XX, Public Law 95-630, 92 Stat. 3728, 15 U.S.C. § 1693 et seq.) as amended from time to time.”

Legislative history of Law 19-299. — See note to § 28:4A-105.

Part 2. Issue and Acceptance of Payment Order.

§ 28:4A-204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

(a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under § 28:4A-202, or (ii) not enforceable, in whole or in part, against the customer under § 28:4A-203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer’s account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under subsection (a) of this section may be fixed by agreement as stated in § 28:1-302(b), but the obligation of a receiving bank to refund payment as stated in subsection (a) of this section may not otherwise be varied by agreement.

(Apr. 30, 1992, D.C. Law 9-95, § 2(c), 39 DCR 1595; Apr. 27, 2013, D.C. Law 19-299, § 7(c)[(d)], 60 DCR 2634.)

Section references. — This section is referenced in § 28:4A-402.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “§ 28:1-302(b)” for “§ 28:1-204(1)” in (b).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revi-

sion Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

ARTICLE 5. LETTERS OF CREDIT.

Sec.
28:5-103. Scope.

§ 28:5-103. Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d) of this section, §§ 28:5-102(a)(9) and (10), 28:5-106(d), and 28:5-114(d), and except to the extent prohibited in §§ 28:1-302 and 28:5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

(Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923; Apr. 27, 2013, D.C. Law 19-299, § 8, 60 DCR 2634.)

Section references. — This section is referenced in § 28:5-116.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “28:1-302” for “28:1-102(3)” in the first sentence of (c).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revi-

sion Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013. Subtitle

ARTICLE 7. DOCUMENTS OF TITLE.

Part 1. General

- Sec.
28:7-101. Short title.
28:7-102. Definitions and index of definitions.
28:7-103. Relation of article to treaty or statute.
28:7-104. Negotiable and nonnegotiable document of title.
28:7-105. Reissuance in alternative medium.
28:7-106. Control of electronic document of title.

Part 2. Warehouse Receipts: Special Provisions

- 28:7-201. Person that may issue a warehouse receipt; storage under bond.

Sec.

- 28:7-202. Form of warehouse receipt; effect of omission.
28:7-203. Liability for nonreceipt or misdescription.
28:7-204. Duty of care; contractual limitation of warehouse's liability.
28:7-205. Title under warehouse receipt defeated in certain cases.
28:7-206. Termination of storage at warehouse's option.
28:7-207. Goods must be kept separate; fungible goods.
28:7-208. Altered warehouse receipts.
28:7-209. Lien of warehouse.
28:7-210. Enforcement of warehouse's lien.

Part 3. Bills of Lading: Special Provisions

Sec.

- 28:7-301. Liability for nonreceipt or misdescription; "Said to contain"; "Shipper's weight, load, and count"; improper handling.
- 28:7-302. Through bills of lading and similar documents of title.
- 28:7-303. Diversion; reconsignment; change of instructions.
- 28:7-304. Tangible bills of lading in a set.
- 28:7-305. Destination bills.
- 28:7-306. Altered bills of lading.
- 28:7-307. Lien of carrier.
- 28:7-308. Enforcement of carrier's lien.
- 28:7-309. Duty of care; contractual limitation of carrier's liability.

Part 4. Warehouse Receipts and Bills of Lading: General Obligations

- 28:7-401. Irregularities in issue of receipt or bill or conduct of issuer.
- 28:7-402. Duplicate document of title; overissue.
- 28:7-403. Obligation of bailee to deliver; excuse.
- 28:7-404. No liability for good-faith delivery pursuant to document of title.

Part 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer

- 28:7-501. Form of negotiation and requirements of due negotiation.

Sec.

- 28:7-502. Rights acquired by due negotiation.
- 28:7-503. Document of title to goods defeated in certain cases.
- 28:7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.
- 28:7-505. Indorser not guarantor for other parties.
- 28:7-506. Delivery without indorsement: right to compel indorsement.
- 28:7-507. Warranties on negotiation or delivery of document of title.
- 28:7-508. Warranties of collecting bank as to documents of title.
- 28:7-509. Adequate compliance with commercial contract.

Part 6. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions

- 28:7-601. Lost, stolen, or destroyed documents of title.
- 28:7-602. Judicial process against goods covered by negotiable document of title.
- 28:7-603. Conflicting claims; interpleader.

Part 7. Miscellaneous Provisions

- 28:7-701. Applicability.
- 28:7-702. Savings clause.

Part 1. General.

§ 28:7-101. Short title.

This article may be cited as the "Uniform Commercial Code — Documents of Title".

(Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-101.

Changes: Revised for style only.

This Article is a revision of the 1962 Official Text with Comments as amended since 1962. The 1962 Official Text was a consolidation and revision of the Uniform Warehouse Receipts Act and the Uniform Bills of Lading Act, and em-

braced the provisions of the Uniform Sales Act relating to negotiation of documents of title.

This Article does not contain the substantive criminal provisions found in the Uniform Warehouse Receipts and Bills of Lading Acts. These criminal provisions are inappropriate to a Commercial Code, and for the most part duplicate portions of the ordinary criminal law relating to

frauds. This revision deletes the former Section 7-105 that provided that courts could apply a rule from Parts 2 and 3 by analogy to a situation not explicitly covered in the provisions on warehouse receipts or bills of lading when it was appropriate. This is, of course, an unexceptional proposition and need not be stated explicitly in the statute. Thus former Section 7-105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends upon the facts of each case.

The Article does not attempt to define the tort

liability of bailees, except to hold certain classes of bailees to a minimum standard of reasonable care. For important classes of bailees, liabilities in case of loss, damages or destruction, as well as other legal questions associated with particular documents of title, are governed by federal statutes, international treaties, and in some cases regulatory state laws, which supersede the provisions of this Article in case of inconsistency. See Section 7-103.

§ 28:7-102. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires, the term:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term “issuer” includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title or the person to which delivery of the goods is to be made by the terms of or pursuant to instructions in a record under a nonnegotiable document of title.

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Shipper” means a person that enters into a contract of transportation with a carrier.

(12) “Sign” means with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear include:

- (1) “Contract for sale”, § 28:2-106.
- (2) “Lessee in the ordinary course of business”, § 28:2A-103.
- (3) “Receipt” of goods, § 28:2-103.

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Dec. 30, 1963, 77 Stat. 718, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(vv), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103 and § 28:9-102.

Legislative history of Law 19-299. — See note to § 28:7-101.

Editor’s notes. — The National Conference of Commissioners on Uniform State Laws has

noted that if a state has enacted Revised Article 1, as the District of Columbia did in 2013, the definitions of “good faith” in subsection (a)(6) and “record” in (a)(10) need not be enacted in this section as they are contained in Article 1, Section 1-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-102.

Changes: New definitions of “carrier,” “good faith,” “record,” “sign,” and “shipper.” Other definitions revised to accommodate electronic mediums.

Purposes: 1. “Bailee” is used in this Article as a blanket term to designate carriers, warehousemen and others who normally issue documents of title on the basis of goods which they have received. The definition does not, however, require actual possession of the goods. If a bailee acknowledges possession when it does not have possession, the bailee is bound by sections of this Article which declare the “bailee’s” obligations. (See definition of “Issuer” in this section and Sections 7-203 and 7-301 on liability in case of non-receipt.) A “carrier” is one type of bailee and is defined as a person that issues a bill of lading. A “shipper” is a person who enters into the contract of transportation with the carrier. The definitions of “bailee,” “consignee,” “consignor,” “goods”, and “issuer”, are unchanged in substance from prior law. “Document of title” is defined in Article 1, and may be in either tangible or electronic form.

2. The definition of warehouse receipt contained in the general definitions section of this Act (Section 1-201) does not require that the issuing warehouse be “lawfully engaged” in business or for profit. The warehouse’s compliance with applicable state regulations such as the filing of a bond has no bearing on the substantive issues dealt with in this Article. Certainly the issuer’s violations of law should not diminish its responsibility on documents

the issuer has put in commercial circulation. But it is still essential that the business be storing goods “for hire” (Section 1-201 and this section). A person does not become a warehouse by storing its own goods.

3. When a delivery order has been accepted by the bailee it is for practical purposes indistinguishable from a warehouse receipt. Prior to such acceptance there is no basis for imposing obligations on the bailee other than the ordinary obligation of contract which the bailee may have assumed to the depositor of the goods. Delivery orders may be either electronic or tangible documents of title. See definition of “document of title” in Section 1-201.

4. The obligation of good faith imposed by this Article and by Article 1, Section 1-304 includes the observance of reasonable commercial standards of fair dealing.

5. The definitions of “record” and “sign” are included to facilitate electronic mediums. See comment 9 to Section 9-102 discussing “record” and the comment to amended Section 2-103 discussing “sign.”

6. “Person entitled under the document” is moved from former Section 7-403.

7. These definitions apply in this Article unless the context otherwise requires. The “context” is intended to refer to the context in which the defined term is used in the Uniform Commercial Code. The definition applies whenever the defined term is used unless the context in which the defined term is used in the statute indicates that the term was not used in its defined sense. See comment to Section 1-201.

Cross References: Point 1: Sections 1-201, 7-203 and 7-301.

Point 2: Sections 1-201 and 7-203.

Point 3: Section 1-201.

Point 4: Section 1-304.

Point 5: Section 9-102 and 2-103.

See general comment to document of title in Section 1-201.

Definitional Cross References: “Bill of lading”. Section 1-201.

“Contract”. Section 1-201.

“Contract for sale”. Section 2-106.

“Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Person”. Section 1-201.

“Purchase”. Section 1-201.

“Receipt of goods”. Section 2-103.

“Right”. Section 1-201.

“Warehouse receipt”. Section 1-201.

§ 28:7-103. Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of the District of Columbia to the extent the treaty, statute, or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 464; 15 U.S.C. § 7001, et seq.), but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

(d) To the extent there is a conflict between Chapter 49 of Subtitle II of this title, the Uniform Electronic Transactions Act, and this article, this article governs.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-101.

Editor’s notes. — The National Conference of Commissioners on Uniform State Laws has noted that in states that have not enacted the Uniform Electronic Transactions Act in some

form, states should consider their own state laws to determine whether there is a conflict between the provisions of this article and those laws particularly as those other laws may affect electronic documents of title.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Sections 7-103 and 10-104.

Changes: Deletion of references to tariffs and classifications; incorporation of former Section 10-104 into subsection (b), provide for intersection with federal and state law governing electronic transactions.

Purposes: 1. To make clear what would of course be true without the Section, that applicable Federal law is paramount.

2. To make clear also that regulatory state statutes (such as those fixing or authorizing a commission to fix rates and prescribe services, authorizing different charges for goods of dif-

ferent values, and limiting liability for loss to the declared value on which the charge was based) are not affected by the Article and are controlling on the matters which they cover unless preempted by federal law. The reference in former Section 7-103 to tariffs, classifications, and regulations filed or issued pursuant to regulatory state statutes has been deleted as inappropriate in the modern era of diminished regulation of carriers and warehouses. If a regulatory scheme requires a carrier or warehouse to issue a tariff or classification, that tariff or classification would be given effect via the state regulatory scheme that this Article

recognizes as controlling. Permissive tariffs or classifications would not displace the provisions of this act, pursuant to this section, but may be given effect through the ability of parties to incorporate those terms by reference into their agreement.

3. The document of title provisions of this act supplement the federal law and regulatory state law governing bailees. This Article focuses on the commercial importance and usage of documents of title. State ex. rel Public Service Commission v. Gunkelman & Sons, Inc., 219 N.W.2d 853 (N.D. 1974).

4. Subsection (c) is included to make clear the interrelationship between the federal Electronic Signatures in Global and National Commerce Act and this article and the conforming amendments to other articles of the Uniform

Commercial Code promulgated as part of the revision of this article. Section 102 of the federal act allows a State statute to modify, limit, or supersede the provisions of Section 101 of the federal act. See the comments to Revised Article 1, Section 1-108.

5. Subsection (d) makes clear that once this article is in effect, its provisions regarding electronic commerce and regarding electronic documents of title control in the event there is a conflict with the provisions of the Uniform Electronic Transactions Act or other applicable state law governing electronic transactions.

Cross References: Sections 1-108, 7-201, 7-202, 7-204, 7-206, 7-309, 7-401, 7-403.

Definitional Cross Reference: "Bill of lading". Section 1-201.

§ 28:7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c) of this section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-101.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-104.

Changes: Subsection (a) is revised to reflect modern style and trade practice. Subsection (b) is revised for style and medium neutrality. Subsection (c) is new.

Purposes: 1. This Article deals with a class of commercial paper representing commodities in storage or transportation. This "commodity paper" is to be distinguished from what might be called "money paper" dealt with in the Article of this Act on Commercial Paper (Article 3) and "investment paper" dealt with in the Article of this Act on Investment Securities (Article 8). The class of "commodity paper" is designated "document of title" following the termi-

nology of the Uniform Sales Act Section 76. Section 1-201. The distinctions between negotiable and nonnegotiable documents in this section makes the most important subclassification employed in the Article, in that the holder of negotiable documents may acquire more rights than its transferor had (See Section 7-502). The former Section 7-104, which provided that a document of title was negotiable if it runs to a named person or assigns if such designation was recognized in overseas trade, has been deleted as not necessary in light of current commercial practice.

A document of title is negotiable only if it satisfies this section. "Deliverable on proper indorsement and surrender of this receipt" will

not render a document negotiable. Bailees often include such provisions as a means of insuring return of nonnegotiable receipts for record purposes. Such language may be regarded as insistence by the bailee upon a particular kind of receipt in connection with delivery of the goods. Subsection (a) makes it clear that a document is not negotiable which provides for delivery to order or bearer only if written instructions to that effect are given by a named person. Either tangible or electronic documents of title may be negotiable if the document meets the requirement of this section.

2. Subsection (c) is derived from Section 3-104(d). Prior to issuance of the document of title, an issuer may stamp or otherwise provide by a notation on the document that it is nonnegotiable even if the document would otherwise comply with the requirement of subsection (a). Once issued as a negotiable document of title,

the document cannot be changed from a negotiable document to a nonnegotiable document. A document of title that is nonnegotiable cannot be made negotiable by stamping or providing a notation that the document is negotiable. The only way to make a document of title negotiable is to comply with subsection (a). A negotiable document of title may fail to be duly negotiated if the negotiation does not comply with the requirements for "due negotiation" stated in Section 7-501.

Cross Reference: Sections 7-501 and 7-502.

Definitional Cross References: "Bearer". Section 1-201.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Person". Section 1-201.

"Sign". Section 7-102

"Warehouse receipt". Section 1-201.

§ 28:7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

(Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-305 and § 28:7-402.

Legislative history of Law 19-299. — See note to § 28:7-101.

Editor's notes. — Former § 28:7-105, concerning construction against negative implication, was derived from Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1. The 2013 revision of this article deleted former § 28:7-105, a statute that provided that courts could apply a rule

from Parts 2 and 3 by analogy to a situation not explicitly covered in the provisions on warehouse receipts or bills of lading when it was appropriate. Per the official commentary appearing under § 28:7-101: "this is, of course, an unexceptional proposition and need not be stated explicitly in the statute. Thus former Section 7-105 has been deleted. Whether applying a rule by analogy to a situation is appropriate depends upon the facts of each case."

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provisions: None.

Other relevant law: UNCITRAL Draft Instrument on the Carriage of Goods by SeaTransport Law.

Purpose: 1. This section allows for documents of title issued in one medium to be reissued in another medium. This section applies to both negotiable and nonnegotiable documents. This section sets forth minimum requirements for giving the reissued document effect and validity. The issuer is not required to issue a document in an alternative medium and if the issuer chooses to do so, it may impose additional requirements. Because a document of title imposes obligations on the issuer of the document, it is imperative for the issuer to be the one who issues the substitute document in order for the substitute document to be effective and valid.

2. The request must be made to the issuer by the person entitled to enforce the document of title (Section 7-102(a)(9)) and that person must surrender possession or control of the original document to the issuer. The reissued document

must have a notation that it has been issued as a substitute for the original document. These minimum requirements must be met in order to give the substitute document effect and validity. If these minimum requirements are not met for issuance of a substitute document of title, the original document of title continues to be effective and valid. Section 7-402. However, if the minimum requirements imposed by this section are met, in addition to any other requirements that the issuer may impose, the substitute document will be the document that is effective and valid.

3. To protect parties who subsequently take the substitute document of title, the person who procured issuance of the substitute document warrants that it was a person entitled under the original document at the time it surrendered possession or control of the original document to the issuer. This warranty is modeled after the warranty found in Section 4-209.

Cross Reference: Sections 7-106, 7-402 and 7-601.

Definitional Cross Reference: "Person entitled to enforce," Section 7-102.

§ 28:7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:2-103, § 28:4-104, § 28:9-102, § 28:9-203, § 28:9-207, § 28:9-314, and § 28:9-601.

Legislative history of Law 19-299. — See note to § 28:7-101.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Uniform Electronic Transactions Act Section 16.

Purpose: 1. The section defines “control” for electronic documents of title and derives its rules from the Uniform Electronic Transactions Act § 16 on transferrable records. Unlike UETA § 16, however, a document of title may be reissued in an alternative medium pursuant to Section 7-105. At any point in time in which a document of title is in electronic form, the control concept of this section is relevant. As under UETA § 16, the control concept embodied in this section provides the legal framework for developing systems for electronic documents of title.

2. Control of an electronic document of title substitutes for the concept of indorsement and possession in the tangible document of title context. See Section 7-501. A person with a tangible document of title delivers the document by voluntarily transferring possession and a person with an electronic document of title delivers the document by voluntarily transferring control. (Delivery is defined in Section 1-201).

3. Subsection (a) sets forth the general rule that the “system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.” The key to having a system that satisfies this test is that identity of the person to which the document was issued or transferred must be reliably established. Of great importance to the functioning of the control concept is to be able to demonstrate, at any point in time, the *person* entitled under the electronic document. For example, a carrier may issue an electronic bill of lading by having the required information in a database that is encrypted and accessible by virtue of a password. If the computer system in which the required information is maintained identifies

the person as the person to which the electronic bill of lading was issued or transferred, that person has control of the electronic document of title. That identification may be by virtue of passwords or other encryption methods. Registry systems may satisfy this test. For example, see the electronic warehouse receipt system established pursuant to 7 C.F.R. Part 735. This Article leaves to the market place the development of sufficient technologies and business practices that will meet the test.

An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. Section 1-201. For example, a record in a computer database could be an electronic document of title assuming that it otherwise meets the definition of document of title. To the extent that third parties wish to deal in paper mediums, Section 7-105 provides a mechanism for exiting the electronic environment by having the issuer reissue the document of title in a tangible medium. Thus if a person entitled to enforce an electronic document of title causes the information in the record to be printed onto paper without the issuer’s involvement in issuing the document of title pursuant to Section 7-105, that paper is not a document of title.

4. Subsection (a) sets forth the general test for control. Subsection (b) sets forth a safe harbor test that if satisfied, results in control under the general test in subsection (a). The test in subsection (b) is also used in Section 9-105 although Section 9-105 does not include the general test of subsection (a). Under subsection (b), at any point in time, a party should be able to identify the single authoritative copy which is unique and identifiable as the authoritative copy. This does not mean that once created that the authoritative copy need be static and never moved or copied from its original location. To the extent that backup systems exist which result in multiple copies, the key to

this idea is that at any point in time, the one authoritative copy needs to be unique and identifiable.

Parties may not by contract provide that control exists. The test for control is a factual test that depends upon whether the general test in subsection (a) or the safe harbor in subsection (b) is satisfied.

5. Article 7 has historically provided for rights under documents of title and rights of transferees of documents of title as those rights relate to the goods covered by the document. Third parties may possess or have control of documents of title. While misfeasance or negligence in failure to transfer or misdelivery of the document by those third parties may create serious issues, this Article has never dealt with those issues as it relates to tangible documents of title, preferring to leave those issues to the law of contracts, agency and tort law. In the electronic document of title regime, third party registry systems are just beginning to develop. It is very difficult to write rules regulating those third parties without some definitive sense of how the third party registry systems will be structured. Systems that are evolving to date tend to be “closed” systems in which all participants must sign on to the master agreement which provides for rights as against the registry system as well as rights among the

members. In those closed systems, the document of title never leaves the system so the parties rely upon the master agreement as to rights against the registry for its failures in dealing with the document. This article contemplates that those “closed” systems will continue to evolve and that the control mechanism in this statute provides a method for the participants in the closed system to achieve the benefits of obtaining control allowed by this article.

This article also contemplates that parties will evolve open systems where parties need not be subject to a master agreement. In an open system a party that is expecting to obtain rights through an electronic document may not be a party to the master agreement. To the extent that open systems evolve by use of the control concept contained in this section, the law of contracts, agency, and torts as it applies to the registry’s misfeasance or negligence concerning the transfer of control of the electronic document will allocate the risks and liabilities of the parties as that other law now does so for third parties who hold tangible documents and fail to deliver the documents.

Cross Reference: Sections 7-105 and 7-501.

Definitional Cross-References:

“Delivery”, 1-201.

“Document of title”, 1-201.

Part 2. Warehouse Receipts: Special Provisions.

§ 28:7-201. Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

(Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-102.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was

adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-201.

Changes: Update for style only.

Purposes: It is not intended by re-enact-

ment of subsection (a) to repeal any provisions of special licensing or other statutes regulating who may become a warehouse. Limitations on the transfer of the receipts and criminal sanc-

tions for violation of such limitations are not impaired. Section 7-103. Compare Section 7-401(4) on the liability of the issuer in such cases. Subsection (b) covers receipts issued by the owner for whiskey or other goods stored in bonded warehouses under such statutes as 26 U.S.C. Chapter 51.

Cross References: Sections 7-103, 7-401.

Definitional Cross References: "Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-202. Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to this subtitle and do not impair its obligation of delivery under § 28:7-403 or its duty of care under § 28:7-204. Any contrary provision is ineffective.

(Dec. 30, 1963, 77 Stat. 719, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-202.

Changes: Language is updated to accommodate electronic commerce and to reflect modern style.

Purposes: 1. This section does not displace any particular legislation that requires other terms in a warehouse receipt or that may

require a particular form of a warehouse receipt. This section does not require that a warehouse receipt be issued. A warehouse receipt that is issued need not contain any of the terms listed in subsection (b) in order to qualify as a warehouse receipt as long as the receipt falls within the definition of "warehouse receipt" in Article 1. Thus the title has been

changed to eliminate the phrase “essential terms” as provided in prior law. The only consequence of a warehouse receipt not containing any term listed in subsection (b) is that a person injured by a term’s omission has a right as against the warehouse for harm caused by the omission. Cases, such as *In re Celotex Corp.*, 134 B. R. 993 (Bankr. M.D. Fla. 1991), that held that in order to have a valid warehouse receipt all of the terms listed in this section must be contained in the receipt, are disapproved.

2. The unique identification code referred to in subsection (b)(3) can include any combination of letters, number, signs, and/or symbols that provide a unique identification. Whether

an electronic or tangible warehouse receipt contains a signature will be resolved with the definition of sign in Section 7-102.

Cross References: Sections 7-103 and 7-401.

Definitional Cross References: “Bearer”. Section 1-201.

“Delivery”. Section 1-201.

“Goods”. Section 7-102.

“Person”. Section 1-201.

“Security interest”. Section 1-201.

“Sign”. Section 7-102.

“Term”. Section 1-201.

“Warehouse receipt”. Section 1-201.

“Warehouse”. Section 7-102.

§ 28:7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription.

(Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-203.

Changes: Changes to this section are for style only.

Purpose: This section is a simplified restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor. The issuer is liable on documents issued by an agent, contrary to instructions of its principal, without receiving goods. No disclaimer of the latter liability is permitted.

Cross Reference: Section 7-301.

Definitional Cross References: “Conspicuous”. Section 1-201.

“Document of title”. Section 1-201.

“Goods”. Section 7-102.

“Good Faith”. Section 1-201 [7-102].

“Issuer”. Section 7-102.

“Notice”. Section 1-202.

“Party”. Section 1-201.

“Purchaser”. Section 1-201.

“Receipt of goods”. Section 2-103.

“Value”. Section 1-204.

§ 28:7-204. Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

(Dec. 30, 1963, 77 Stat. 720, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-202.

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-204.

Changes: Updated to reflect modern, standard commercial practices.

Purposes of Changes: 1. Subsection (a) continues the rule without change from former Section 7-204 on the warehouse's obligation to exercise reasonable care.

2. Former Section 7-204(2) required that the term limiting damages do so by setting forth a specific liability per article or item or of a value per unit of weight. This requirement has been deleted as out of step with modern industry practice. Under subsection (b) a warehouse may limit its liability for damages for loss of or damage to the goods by a term in the warehouse receipt or storage agreement without the term constituting an impermissible disclaimer of the obligation of reasonable care. The parties cannot disclaim by contract the warehouse's obligation of care. Section 1-302. For example, limitations based upon per unit of weight, per package, per occurrence, or per receipt as well as limitations based upon a multiple of the storage rate may be commercially appropriate. As subsection (d) makes clear, the states or the

federal government may supplement this section with more rigid standards of responsibility for some or all bailees.

3. Former Section 7-204(2) also provided that an increased rate can not be charged if contrary to a tariff. That language has been deleted. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section allowing an increased rate. The provisions of a non-mandatory tariff may be incorporated by reference in the parties' agreement. See Comment 2 to Section 7-103. Subsection (c) deletes the reference to tariffs for the same reason that the reference has been omitted in subsection (b).

4. As under former Section 7-204(2), subsection (b) provides that a limitation of damages is ineffective if the warehouse has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the warehouse's own use. See *Adams v. Ryan & Christie Storage, Inc.*, 563 F. Supp. 409 (E.D. Pa. 1983) aff'd 725 F.2d 666 (3rd Cir. 1983). Cases such as *I.C.C. Metals Inc. v. Municipal Warehouse Co.*, 409 N.E. 2d 849 (N.Y. Ct. App. 1980) holding that mere failure to redeliver results in a pre-

sumption of conversion to the warehouse's own use are disapproved. "Conversion to its own use" is narrower than the idea of conversion generally. Cases such as *Lipman v. Peterson*, 575 P.2d 19 (Kan. 1978) holding to the contrary are disapproved.

5. Storage agreements commonly establish the contractual relationship between warehouses and depositors who have an on-going relationship. The storage agreement may allow for the movement of goods into and out of a warehouse without the necessity of issuing or

amending a warehouse receipt upon each entry or exit of goods from the warehouse.

Cross References: Sections 1-302, 7-103, 7-309 and 7-403.

Definitional Cross References: "Goods". Section 7-102.

"Reasonable time". Section 1-204.

"Sign". Section 7-102.

"Term". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-502.

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-205.

Changes: Changes for style only.

Purposes: 1. The typical case covered by this section is that of the warehouse-dealer in grain, and the substantive question at issue is whether in case the warehouse becomes insolvent the receipt holders shall be able to trace and recover grain shipped to farmers and other purchasers from the elevator. This was possible under the old acts, although courts were eager to find estoppels to prevent it. The practical difficulty of tracing fungible grain means that the preservation of this theoretical right adds little to the commercial acceptability of negotiable grain receipts, which really circulate on the credit of the warehouse. Moreover, on default of the warehouse, the receipt holders at least share in what grain remains, whereas retaking the grain from a good faith cash purchaser reduces the purchaser completely to the status of general creditor in a situation where there was very little the purchaser could do to guard against the loss. Compare 15 U.S.C. Section 714p enacted in 1955.

2. This provision applies to both negotiable and nonnegotiable warehouse receipts. The concept of due negotiation is provided for in 7-501. The definition of "buyer in ordinary course" is in Article 1 and provides, among other things, that a buyer must either have possession or a right to obtain the goods under Article 2 in order to be a buyer in ordinary course. This section requires actual delivery of the fungible goods to the buyer in ordinary course. Delivery requires voluntary transfer of possession of the fungible goods to the buyer. See amended Section 2-103. This section is not satisfied by the delivery of the document of title to the buyer in ordinary course.

Cross References: Sections 2-403 and 9-320.

Definitional Cross References: "Buyer in ordinary course of business". Section 1-201.

"Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible" goods. Section 1-201.

"Goods". Section 7-102.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-206. Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to § 28:7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this section and § 28:7-210, the warehouse may specify in the notice given under subsection (a) of this section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-206.

Changes: Changes for style.

Purposes: 1. This section provides for three situations in which the warehouse may terminate storage for reasons other than enforcement of its lien as permitted by Section 7-210. Most warehousing is for an indefinite term, the bailor being entitled to delivery on reasonable demand. It is necessary to define the warehouse's power to terminate the bailment, since it would be commercially intolerable to allow

warehouses to order removal of the goods on short notice. The thirty day period provided where the document does not carry its own period of termination corresponds to commercial practice of computing rates on a monthly basis. The right to terminate under subsection (a) includes a right to require payment of "any charges", but does not depend on the existence of unpaid charges.

2. In permitting expeditious disposition of perishable and hazardous goods the pre-Code Uniform Warehouse Receipts Act, Section 34,

made no distinction between cases where the warehouse knowingly undertook to store such goods and cases where the goods were discovered to be of that character subsequent to storage. The former situation presents no such emergency as justifies the summary power of removal and sale. Subsections (b) and (c) distinguish between the two situations. The reason of this section should apply if the goods become hazardous during the course of storage. The process for selling the goods described in Section 7-210 governs the sale of goods under this section except as provided in subsections (b) and (c) for the situations described in those subsections respectively.

3. Protection of its lien is the only interest which the warehouse has to justify summary sale of perishable goods which are not hazardous. This same interest must be recognized when the stored goods, although not perishable, decline in market value to a point which threatens the warehouse's security.

4. The right to order removal of stored goods

is subject to provisions of the public warehousing laws of some states forbidding warehouses from discriminating among customers. Nor does the section relieve the warehouse of any obligation under the state laws to secure the approval of a public official before disposing of deteriorating goods. Such regulatory statutes and the regulations under them remain in force and operative. Section 7-103.

Cross References: Sections 7-103 and 7-403.

Definitional Cross References: "Delivery". Section 1-201.

"Document of title". Section 1-102.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Notice". Section 1-202.

"Notification". Section 1-202.

"Person". Section 1-201.

"Reasonable time". Section 1-205.

"Value". Section 1-204.

"Warehouse". Section 7-102.

§ 28:7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled to the fungible goods include all holders to which overissued receipts have been duly negotiated.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-207.

Changes: Changes for style only.

Purposes: No change of substance is made from former Section 7-207. Holders to whom overissued receipts have been duly negotiated shall share in a mass of fungible goods. Where individual ownership interests are merged into claims on a common fund, as is necessarily the case with fungible goods, there is no policy reason for discriminating between successive purchasers of similar claims.

Definitional Cross References: "Delivery". Section 1-201.

"Duly negotiate". Section 7-501.

"Fungible goods". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

(Dec. 30, 1963, 77 Stat. 721, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-208.

Changes: To accommodate electronic documents of title.

Purpose: 1. The execution of tangible warehouse receipts in blank is a dangerous practice. As between the issuer and an innocent purchaser the risks should clearly fall on the former. The purchaser must have purchased the tangible negotiable warehouse receipt in good faith and for value to be protected under the rule of the first sentence which is a limited exception to the general rule in the second sentence. Electronic document of title systems should have protection against unauthorized access and unauthorized changes. See 7-106. Thus the protection for good faith purchasers found in the first sentence is not necessary in the context of electronic documents.

2. Under the second sentence of this section, an unauthorized alteration whether made with or without fraudulent intent does not relieve the issuer of its liability on the warehouse receipt as originally executed. The unauthorized alteration itself is of course ineffective against the warehouse. The rule stated in the second sentence applies to both tangible and electronic warehouse receipts.

Definitional Cross References: “Good faith”. Section 1-201 [7-102].

“Issuer”. Section 7-102.

“Notice”. Section 1-202.

“Purchaser”. Section 1-201.

“Value”. Section 1-204.

“Warehouse receipt”. Section 1-201.

§ 28:7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse’s lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this section, such as for money advanced and interest. The security interest is governed by Article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) of this section or a security interest under subsection (b) of this section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 28:7-403; or

(C) Power of disposition under § 28:2-403, 28:2A-304, 28:2A-305 28:9-320, or 28:9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, the term "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

(Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1; Mar. 16, 1982, D.C. Law 4-85, § 8, 29 DCR 309; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Sections 7-209 and 7-503.

Changes: Expanded to recognize warehouse lien when a warehouse receipt is not issued but goods are covered by a storage agreement.

Purposes: 1. Subsection (a) defines the warehouse's statutory lien. Other than allowing a warehouse to claim a lien under this section when there is a storage agreement and not a warehouse receipt, this section remains unchanged in substance from former Section 7-209(1). Under the first sentence, a specific lien attaches automatically without express notation on the receipt or storage agreement with regard to goods stored under the receipt or the storage agreement. That lien is limited to the usual charges arising out of a storage transaction.

Example 1: Bailor stored goods with a warehouse and the warehouse issued a warehouse receipt. A lien against those goods arose as set forth in subsection (a), the first sentence, for the charges for storage and the other expenses of those goods. The warehouse may enforce its lien under Section 7-210 as against the bailor. Whether the warehouse receipt is negotiable or nonnegotiable is not important to the warehouse's rights as against the bailor.

Under the second sentence, by notation on the receipt or storage agreement, the lien can be made a general lien extending to like charges in relation to other goods. Both the specific lien and general lien are as to goods in the possession of the warehouse and extend to proceeds from the goods as long as the proceeds are in the possession of the warehouse. The

same rules apply whether the receipt is negotiable or non-negotiable.

Example 2: Bailor stored goods (lot A) with a warehouse and the warehouse issued a warehouse receipt for those goods. In the warehouse receipt it is stated that the warehouse will also have a lien on goods covered by the warehouse receipt for storage charges and the other expenses for any other goods that are stored with the warehouse by the bailor. The statement about the lien on other goods does not specify an amount or a rate. Bailor then stored other goods (lot B) with the warehouse. Under subsection (a), first sentence, the warehouse has a lien on the specific goods (lot A) covered by the warehouse receipt. Under subsection (a), second sentence, the warehouse has a lien on the goods in lot A for the storage charges and the other expenses arising from the goods in lot B. That lien is enforceable as against the bailor regardless of whether the receipt is negotiable or nonnegotiable.

Under the third sentence, if the warehouse receipt is negotiable, the lien as against a holder of that receipt by due negotiation is limited to the amount or rate specified on the receipt for the specific lien or the general lien, or, if none is specified, to a reasonable charge for storage of the specific goods covered by the receipt for storage after the date of the receipt.

Example 3: Same facts as Example 1 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the warehouse may enforce its lien against the bailor's goods stored in the warehouse as against the person to whom the negotiable warehouse receipt has been duly negotiated. Section 7-502. That lien is limited to the charges or rates specified in the receipt or a reasonable charge for storage as stated in the last sentence of subsection (a).

Example 4: Same facts as Example 2 except that the warehouse receipt is negotiable and has been duly negotiated (Section 7-501) to a person other than the bailor. Under the last sentence of subsection (a), the lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is not enforceable as against the person to whom the receipt has been duly negotiated. Without a statement of a specified amount or rate for the general lien, the warehouse's general lien is not enforceable as against the person to whom the negotiable document has been duly negotiated. However, the warehouse lien for charges and expenses related to storage of lot A goods is still enforceable as against the person to whom the receipt was duly negotiated.

Example 5. Same facts as Examples 2 and 4 except the warehouse had stated on the negotiable warehouse receipt a specified amount or rate for the general lien on other goods (lot B).

Under the last sentence of subsection (a), the general lien on lot A goods for the storage charges and the other expenses arising from storage of lot B goods is enforceable as against the person to whom the receipt has been duly negotiated.

2. Subsection (b) provides for a security interest based upon agreement. Such a security interest arises out of relations between the parties other than bailment for storage or transportation, as where the bailee assumes the role of financier or performs a manufacturing operation, extending credit in reliance upon the goods covered by the receipt. Such a security interest is not a statutory lien. Compare Sections 9-109 and 9-333. It is governed in all respects by Article 9, except that subsection (b) requires that the receipt specify a maximum amount and limits the security interest to the amount specified. A warehouse could also take a security interest to secure its charges for storage and the other expenses listed in subsection (a) to protect these claims upon the loss of the statutory possessory warehouse lien if the warehouse loses possession of the goods as provided in subsection (e).

Example 6: Bailor stores goods with a warehouse and the warehouse issues a warehouse receipt that states that the warehouse is taking a security interest in the bailed goods for charges of storage, expenses, for money advanced, for manufacturing services rendered, and all other obligations that the bailor may owe the warehouse. That is a security interest covered in all respects by Article 9. Subsection (b). As allowed by this section, a warehouse may rely upon its statutory possessory lien to protect its charges for storage and the other expenses related to storage. For those storage charges covered by the statutory possessory lien, the warehouse is not required to use a security interest under subsection (b).

3. Subsections (a) and (b) validate the lien and security interest "against the bailor." Under basic principles of derivative rights as provided in Section 7-504, the warehouse lien is also valid as against parties who obtain their rights from the bailor except as otherwise provided in subsection (a), third sentence, or subsection (c).

Example 7: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt that also claims a general lien in other goods stored with the warehouse. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor notifies the warehouse that the goods have been sold to Buyer and the bailee acknowledges that fact to the Buyer. Section 2-503. The warehouse lien for storage of those goods is effective against Buyer for both the specific lien and the general lien. Section 7-504.

Example 8: Bailor stores goods with a warehouse and the warehouse issues a nonnegotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the goods while the goods are in the warehouse's possession to Secured Party (SP) who properly perfects a security interest in the goods. See Revised 9-312(d). The warehouse lien is superior in priority over SP's security interest. See Revised 9-203(b)(2) (debtor can grant a security interest to the extent of debtor's rights in the collateral).

Example 9: Bailor stores goods with a warehouse and the warehouse issues a negotiable warehouse receipt. A lien on the bailed goods for the charges for storage and the other expenses arises under subsection (a). Bailor grants a security interest in the negotiable document to SP. SP properly perfects its interest in the negotiable document by taking possession through a 'due negotiation.' Revised 9-312(c). SP's security interest is subordinate to the warehouse lien. Section 7-209(a), third sentence. Given that bailor's rights are subject to the warehouse lien, the bailor cannot grant to the SP greater rights than the bailor has under Section 9-203(b)(2), perfection of the security interest in the negotiable document and the goods covered by the document through SP's filing of a financing statement should not give a different result.

As against third parties who have interests in the goods prior to the storage with the warehouse, subsection (c) continues the rule under the prior uniform statutory provision that to validate the lien or security interest of the warehouse, the owner must have entrusted the goods to the depositor, and that the circumstances must be such that a pledge by the depositor to a good faith purchaser for value would have been valid. Thus the owner's interest will not be subjected to a lien or security interest arising out of a deposit of its goods by a thief. The warehouse may be protected because of the actual, implied or apparent authority of the depositor, because of a Factor's Act, or because of other circumstances which would protect a bona fide pledgee, unless those circumstances are denied effect under the second sentence of subsection (c). The language of Section 7-503 is brought into subsection (c) for purposes of clarity. The comments to Section 7-503 are helpful in interpreting delivery, entrustment or acquiescence.

Where the third party is the holder of a security interest, obtained prior to the issuance of a negotiable warehouse receipt, the rights of the warehouse depend on the priority given to a hypothetical bona fide pledgee by Article 9, particularly Section 9-322. Thus the special priority granted to statutory liens by Section 9-333 does not apply to liens under subsection

(a) of this section, since subsection (c), second sentence, "expressly provides otherwise" within the meaning of Section 9-333.

As to household goods, however, subsection (d) makes the warehouse's lien "for charges and expenses in relation to the goods" effective against all persons if the depositor was the legal possessor. The purpose of the exception is to permit the warehouse to accept household goods for storage in sole reliance on the value of the goods themselves, especially in situations of family emergency.

Example 10: Bailor grants a perfected security interest in the goods to SP prior to storage of the goods with the warehouse. Bailor then stores goods with the warehouse and the warehouse issues a warehouse receipt for the goods. A warehouse lien on the bailed goods for the charges for storage or other expenses arises under subsection (a). The warehouse lien is not effective as against SP unless SP entrusted the goods to the bailor with actual or apparent authority to ship store, or sell the goods or with power of disposition under subsection (c)(1) or acquiesced in the bailor's procurement of a document of title under subsection (c)(2). This result obtains whether the receipt is negotiable or nonnegotiable.

Example 11: Sheriff who had lawfully repossessed household goods in an eviction action stored the goods with a warehouse. A lien on the bailed goods arises under subsection (a). The lien is effective as against the owner of the goods. Subsection (d).

4. As under previous law, this section creates a statutory possessory lien in favor of the warehouse on the goods stored with the warehouse or on the proceeds of the goods. The warehouse loses its lien if it loses possession of the goods or the proceeds. Subsection (e).

5. Where goods have been stored under a non-negotiable warehouse receipt and are sold by the person to whom the receipt has been issued, frequently the goods are not withdrawn by the new owner. The obligations of the seller of the goods in this situation are set forth in Section 2-503(4) on tender of delivery and include procurement of an acknowledgment by the bailee of the buyer's right to possession of the goods. If a new receipt is requested, such an acknowledgment can be withheld until storage charges have been paid or provided for. The statutory lien for charges on the goods sold, granted by the first sentence of subsection (a), continues valid unless the bailee gives it up. See Section 7-403. But once a new receipt is issued to the buyer, the buyer becomes "the person on whose account the goods are held" under the second sentence of subsection (a); unless the buyer undertakes liability for charges in relation to other goods stored by the seller, there is no general lien against the buyer for such charges. Of course, the bailee may

preserve the general lien in such a case either by an arrangement by which the buyer "is liable for" such charges, or by reserving a security interest under subsection (b).

6. A possessory warehouse lien arises as provided under subsection (a) if the parties to the bailment have a storage agreement on a warehouse receipt is issued. In the modern warehouse, the bailor and the bailee may enter into a master contract governing the bailment with the bailee and bailor keeping track of the goods stored pursuant to the master contract by notation on their respective books and records and the parties send notification via electronic communication as to what goods are covered by the master contract. Warehouse receipts are not issued. See Comment 4 to Section 7-204. There is no particular form for a warehouse receipt and failure to contain any of the terms listed in Section 7-202 does not deprive the warehouse of its lien that arises under subsection (a). See the comment to Section 7-202.

Cross References: Point 1: Sections 7-501 and 7-502.

Point 2: Sections 9-109 and 9-333.

Point 3: Sections 2-503, 7-503, 7-504, 9-203, 9-312, and 9-322.

Point 4: Sections 2-503, 7-501, 7-502, 7-504, 9-312, 9-331, 9-333, 9-401.

Point 5: Sections 2-503 and 7-403.

Point 6: Sections 7-202 and 7-204.

Definitional Cross References: "Delivery". Section 1-201.

"Document of Title". Section 1-201

"Goods". Section 7-102.

"Money". Section 1-201.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Right". Section 1-201.

"Security interest". Section 1-201.

"Value". Section 1-204.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-210. Enforcement of warehouse's lien.

(a)(1) Except as otherwise provided in subsection (b) of this section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.

(2) The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold.

(3) A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by paragraph (2) of this subsection.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than 6 conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold and must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

(Dec. 30, 1963, 77 Stat. 722, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-206 and § 28:7-308.

Legislative history of Law 19-299. — See note to § 28:7-201.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-210.

Changes: Update to accommodate electronic commerce and for style.

Purposes: 1. Subsection (a) makes "commercial reasonableness" the standard for foreclosure proceedings in all cases except non-commercial storage with a warehouse. The latter category embraces principally storage of household goods by private owners; and for such cases the detailed provisions as to notification, publication and public sale are retained in subsection (b) with one change. The requirement in former Section 7-210(2)(b) that the notification must be sent in person or by registered or certified mail has been deleted. Notifi-

cation may be sent by any reasonable means as provided in Section 1-202. The swifter, more flexible procedure of subsection (a) is appropriate to commercial storage. Compare seller's power of resale on breach by buyer under the provisions of the Article on Sales (Section 2-706). Commercial reasonableness is a flexible concept that allows for a wide variety of actions to satisfy the rule of this section, including electronic means of posting and sale.

2. The provisions of subsections (d) and (e) permitting the bailee to bid at public sales and confirming the title of purchasers at foreclosure sales are designed to secure more bidding and better prices and remain unchanged from former Section 7-210.

3. A warehouse may have recourse to an interpleader action in appropriate circumstances. See Section 7-603.

4. If a warehouse has both a warehouse lien and a security interest, the warehouse may enforce both the lien and the security interest simultaneously by using the procedures of Article 9. Section 7-210 adopts as its touchstone "commercial reasonableness" for the enforcement of a warehouse lien. Following the procedures of Article 9 satisfies "commercial reasonableness."

Cross Reference: Sections 2-706, 7-403, 7-603 and Part 6 of Article 9.

Definitional Cross References: "Bill of lading". Section 1-201.

"Conspicuous". Section 1-201.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document of Title". Section 1-201.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Notification". Section 1-202.

"Notifies". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Warehouse". Section 7-102.

Part 3. Bills of Lading: Special Provisions.

§ 28:7-301. Liability for nonreceipt or misdescription; "Said to contain"; "Shipper's weight, load, and count"; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by the phrase "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load, and count", or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading;

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count", or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count", or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and

weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person other than the shipper.

(Dec. 30, 1963, 77 Stat. 723, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(ww), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-301.

Changes: Changes for clarity, style and to recognize deregulation in the transportation industry.

Purposes: 1. This section continues the rules from former Section 7-301 with one substantive change. The obligations of the issuer of the bill of lading under former subsections (2) and (3) were limited to issuers who were common carriers. Subsections (b) and (c) apply the same rules to all issuers not just common carriers. This section is compatible with the policies stated in the federal Bills of Lading Act, 49 U.S.C. § 80113 (2000).

2. The language of the pre-Code Uniform Bills of Lading Act suggested that a carrier is ordinarily liable for damage caused by improper loading, but may relieve itself of liability by disclosing on the bill that shipper actually loaded. A more accurate statement of the law is that the carrier is not liable for losses caused by act or default of the shipper, which would include improper loading. *D. H. Overmyer Co. v. Nelson Brantley Glass Co.*, 168 S.E.2d 176 (Ga. Ct. App. 1969). There was some question whether under pre-Code law a carrier was liable even to a good faith purchaser of a negotiable bill for such losses, if the shipper's faulty loading in fact caused the loss. Subsection (d) permits the carrier to bar, by disclosure of shipper's loading, liability to a good faith purchaser. There is no implication that decisions such as *Modern Tool Corp. v. Pennsylvania R. Co.*, 100 F.Supp. 595 (D.N.J.1951), are disapproved.

3. This section is a restatement of existing law as to the method by which a bailee may avoid responsibility for the accuracy of descriptions which are made by or in reliance upon information furnished by the depositor or shipper. The wording in this section — “contents or

condition of contents of packages unknown” or “shipper's weight, load and count” — to indicate that the shipper loaded the goods or that the carrier does not know the description, condition, or contents of the loaded packages continues to be appropriate as commonly understood in the transportation industry. The reasons for this wording are as important in 2002 as when the prior section initially was approved. The issuer is liable on documents issued by an agent, contrary to instructions of his principal, without receiving goods. No disclaimer of this liability is permitted since it is not a matter either of the care of the goods or their description.

4. The shipper's erroneous report to the carrier concerning the goods may cause damage to the carrier. Subsection (e) therefore provides appropriate indemnity.

5. The word “freight” in the former Section 7-301 has been changed to “goods” to conform to international and domestic land transport usage in which “freight” means the price paid for carriage of the goods and not the goods themselves. Hence, changing the word “freight” to the word “goods” is a clarifying change that fits both international and domestic practice.

Cross References: Sections 7-203, 7-309 and 7-501.

Definitional Cross References: “Bill of lading”. Section 1-201.

“Consignee”. Section 7-102.

“Document of Title”. Section 1-201.

“Duly negotiate”. Section 7-501.

“Good faith”. Section 1-201 [7-102].

“Goods”. Section 7-102.

“Holder”. Section 1-201.

“Issuer”. Section 7-102.

“Notice”. Section 1-202.

“Party”. Section 1-201.

“Purchaser.” Section 1-201.

“Receipt of Goods”. Section 2-103.

“Value”. Section 1-204.

§ 28:7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

(Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-302.

Changes: To conform to current terminology and for style.

Purposes: 1. This section continues the rules from former Section 7-302 without substantive change. The term "performing carrier" is substituted for the term "connecting carrier" to conform the terminology of this section with terminology used in recent UNCITRAL and OAS proposals concerning transportation and through bills of lading. This change in terminology is not substantive. This section is com-

patible with liability on carriers under federal law. See 49 U.S.C. §§ 11706, 14706 and 15906.

The purpose of this section is to subject the initial carrier under a through bill to suit for breach of the contract of carriage by any performing carrier and to make it clear that any such performing carrier holds the goods on terms which are defined by the document of title even though such performing carrier did not issue the document. Since the performing carrier does hold the goods on the terms of the document, it must honor a proper demand for delivery or a diversion order just as the original

bailee would have to. Similarly it has the benefits of the excuses for non-delivery and limitations of liability provided for the original bailee who issued the bill. Unlike the original bailee-issuer, the performing carrier's responsibility is limited to the period while the goods are in its possession. The section does not impose any obligation to issue through bills.

2. The reference to documents other than through bills looks to the possibility that multi-purpose documents may come into use, e.g., combination warehouse receipts and bills of lading. As electronic documents of title come into common usage, storage documents (e.g. warehouse receipts) and transportation documents (e.g. bills of lading) may merge seamlessly into one electronic document that can serve both the storage and transportation segments of the movement of goods.

3. Under subsection (a) the issuer of a

through bill of lading may become liable for the fault of another person. Subsection (c) gives the issuer appropriate rights of recourse.

4. Despite the broad language of subsection (a), Section 7-302 is subject to preemption by federal laws and treaties. Section 7-103. The precise scope of federal preemption in the transportation sector is a question determined under federal law.

Cross reference: Section 7-103

Definitional Cross References: "Agreement". Section 1-201.

"Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Party". Section 1-201.

"Person". Section 1-201.

§ 28:7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

(Dec. 30, 1963, 77 Stat. 724, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-403.

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-303.

Changes: To accommodate electronic documents and for style.

Purposes: 1. Diversion is a very common commercial practice which defeats delivery to

the consignee originally named in a bill of lading. This section continues former Section 7-303's safe harbor rules for carriers in situations involving diversion and adapts those rules to electronic documents of title. This section works compatibly with Section 2-705. Car-

riers may as a business matter be willing to accept instructions from consignees in which case the carrier will be liable for misdelivery if the consignee was not the owner or otherwise empowered to dispose of the goods under subsection (a)(4). The section imposes no duty on carriers to undertake diversion. The carrier is of course subject to the provisions of mandatory filed tariffs as provided in Section 7-103.

2. It should be noted that the section provides only an immunity for carriers against liability for "misdelivery." It does not, for example, defeat the title to the goods which the consignee-buyer may have acquired from the consignor-seller upon delivery of the goods to the carrier under a non-negotiable bill of lading. Thus if the carrier, upon instructions from the consignor, returns the goods to the consignor, the consignee may recover the goods from the consignor or the consignor's insolvent estate. However, under certain circumstances, the consignee's title may be defeated by diversion of the

goods in transit to a different consignee. The rights that arise between the consignor-seller and the consignee-buyer out of a contract for the sale of goods are governed by Article 2.

Cross References: Point 1: Sections 2-705 and 7-103.

Point 2: Article 2, Sections 7-403 and 7-504(3).

Definitional Cross References: "Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Carrier". Section 7-102

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Holder". Section 1-201.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Term". Section 1-201.

§ 28:7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this article against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-304.

Changes: To limit bills in a set to tangible

bills of lading and to use terminology more consistent with modern usage.

Purposes: 1. Tangible bills of lading in a set

are still used in some nations in international trade. Consequently, a tangible bill of lading part of a set could be at issue in a lawsuit that might come within Article 7. The statement of the legal effect of a lawfully issued set is in accord with existing commercial law relating to maritime and other international tangible bills of lading. This law has been codified in the Hague and Warsaw Conventions and in the Carriage of Goods by Sea Act, the provisions of which would ordinarily govern in situations where bills in a set are recognized by this Article. Tangible bills of lading in a set are prohibited in domestic trade.

2. Electronic bills of lading in domestic or international trade will not be issued in a set given the requirements of control necessary to deliver the bill to another person. An electronic bill of lading will be a single, authoritative copy. Section 7-106. Hence, this section differentiates between electronic bills of lading and tangible bills of lading. This section does not prohibit

electronic data messages about goods in transit because these electronic data messages are not the issued bill of lading. Electronic data messages contain information for the carrier's management and handling of the cargo but this information for the carrier's use is not the issued bill of lading.

Cross Reference: Section 7-103, 7-303 and 7-106.

Definitional Cross References: "Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Holder". Section 1-201.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

§ 28:7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to § 28:7-105, may procure a substitute bill to be issued at any place designated in the request.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-305.

Changes: To accommodate electronic bills of lading and for style.

Purposes: 1. Subsection (a) continues the rules of former Section 7-305(1) without substantive change. This proposal is designed to facilitate the use of order bills in connection with fast shipments. Use of order bills on high speed shipments is impeded by the fact that the goods may arrive at destination before the documents, so that no one is ready to take delivery from the carrier. This is especially inconvenient for carriers by truck and air, who do not have terminal facilities where shipments can be held to await the consignee's appearance. Order bills would be useful to take advan-

tage of bank collection. This may be preferable to C.O.D. shipment in which the carrier, e.g. a truck driver, is the collecting and remitting agent. Financing of shipments under this plan would be handled as follows: seller at San Francisco delivers the goods to an airline with instructions to issue a bill in New York to a named bank. Seller receives a receipt embodying this undertaking to issue a destination bill. Airline wires its New York freight agent to issue the bill as instructed by the seller. Seller wires the New York bank a draft on buyer. New York bank indorses the bill to buyer when the buyer honors the draft. Normally seller would act through its own bank in San Francisco, which would extend credit in reliance on the airline's contract to deliver a bill to the order of

its New York correspondent. This section is entirely permissive; it imposes no duty to issue such bills. Whether a performing carrier will act as issuing agent is left to agreement between carriers.

2. Subsection (b) continues the rule from former Section 7-305(2) with accommodation for electronic bills of lading. If the substitute bill changes from an electronic to a tangible medium or vice versa, the issuance of the sub-

stitute bill must comply with Section 7-105 to give the substitute bill validity and effect.

Cross Reference: Section 7-105.

Definitional Cross References: "Bill of lading". Section 1-201.

"Consignor". Section 7-102.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Receipt of goods". Section 2-103.

§ 28:7-306. Altered bills of lading.

An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-306.

Changes: None

Purposes: An unauthorized alteration or filling in of a blank, whether made with or without fraudulent intent, does not relieve the issuer of its liability on the document as originally executed. This section applies to both tangible and electronic bills of lading, applying the same rule to both types of bills of lading. The control concept of Section 7-106 requires

that any changes to the electronic document of title be readily identifiable as authorized or unauthorized. Section 7-306 should be compared to Section 7-208 where a different rule applies to the unauthorized filling in of a blank for tangible warehouse receipts.

Cross Reference: Sections 7-106 and 7-208.

Definitional Cross References: "Bill of lading". Section 1-201.

"Issuer". Section 7-102.

§ 28:7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

(Dec. 30, 1963, 77 Stat. 725, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-307.

Changes: Expanded to cover proceeds of the goods transported.

Purposes: 1. The section is intended to give carriers a specific statutory lien for charges and expenses similar to that given to warehouses by the first sentence of Section 7-209(a) and extends that lien to the proceeds of the goods as long as the carrier has possession of the proceeds. But because carriers do not commonly claim a lien for charges in relation to other goods or lend money on the security of goods in their hands, provisions for a general lien or a security interest similar to those in Section 7-209(a) and (b) are omitted. Carriers may utilize Article 9 to obtain a security interest and become a secured party or a carrier may agree to limit its lien rights in a transportation agreement with the shipper. As the lien given by this section is specific, and the storage or transportation often preserves or increases the value of the goods, subsection (b) validates the lien against anyone who permitted the bailor to have possession of the goods. Where the carrier is required to receive the goods for transportation, the owner's interest may be subjected to charges and expenses arising out of deposit of his goods by a thief. The crucial mental element is the carrier's knowledge or reason to know of the bailor's lack of authority. If the carrier does not know or have reason to know of the bailor's lack of authority, the carrier has a lien under

this section against any person so long as the conditions of subsection (b) are satisfied. In light of the crucial mental element, Sections 7-307 and 9-333 combine to give priority to a carrier's lien over security interests in the goods. In this regard, the judicial decision in *In re Sharon Steel Corp.*, 25 U.C.C. Rep.2d 503, 176 B.R. 384 (W.D. Pa. 1995) is correct and is the controlling precedent.

2. The reference to charges in this section means charges relating to the bailment relationship for transportation. Charges does not mean that the bill of lading must state a specific rate or a specific amount. However, failure to state a specific rate or a specific amount has legal consequences under the second sentence of subsection (a).

3. The carrier's specific lien under this section is a possessory lien. See subsection (c). Part 3 of Article 7 does not require any particular form for a bill of lading. The carrier's lien arises when the carrier has issued a bill of lading.

Cross References: Point 1: Sections 7-209, 9-109 and 9-333.

Point 3: Section 7-202 and 7-209.

Definitional Cross References: "Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Consignor". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Value". Section 1-204.

§ 28:7-308. Enforcement of carrier's lien.

(a)(1) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner.

(2) The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold.

(3) A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by paragraph (2) of this subsection.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this section or the procedure set forth in § 28:7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

(Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1; Apr. 9, 1997, D.C. Law 11-255, § 27(xx), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-308.

Changes: To conform language to modern usage and for style.

Purposes: This section is intended to give the carrier an enforcement procedure of its lien coextensive with that given the warehouse in cases other than those covering noncommercial storage by the warehouse. See Section 7-210 and comments.

Cross Reference: Section 7-210.

Definitional Cross References: "Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Notification". Section 1-202.

"Notifies". Section 1-202.

"Person". Section 1-201.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

§ 28:7-309. Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

(Dec. 30, 1963, 77 Stat. 726, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-301.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-309.

Changes: References to tariffs eliminated because of deregulation, adding reference to transportation agreements, and for style.

Purposes: 1. A bill of lading may also serve as the contract between the carrier and the bailor. Parties in their contract should be able to limit the amount of damages for breach of that contract including breach of the duty to take reasonable care of the goods. The parties cannot disclaim by contract the carrier's obligation of care. Section 1-302.

Federal statutes and treaties for air, maritime and rail transport may alter the standard of care. These federal statutes and treaties preempt this section when applicable. Section 7-103. Subsection (a) does not impair any rule of law imposing the liability of an insurer on a common carrier in intrastate commerce. Subsection (b), however, applies to the common carrier's liability as an insurer as well as to liability based on negligence. Subsection (b) allows the term limiting damages to appear either in the bill of lading or in the parties' transportation agreement. Compare 7-204(b). Subsection (c) allows the parties to agree to provisions regarding time and manner of presenting claims or commencing actions if the

provisions are either in the bill of lading or the transportation agreement. Compare 7-204(c). Transportation agreements are commonly used to establish agreed terms between carriers and shippers that have an on-going relationship.

2. References to public tariffs in former Section 7-309(2) and (3) have been deleted in light of the modern era of deregulation. See Comment 2 to Section 7-103. If a tariff is required under state or federal law, pursuant to Section 7-103(a), the tariff would control over the rule of this section. As governed by contract law, parties may incorporate by reference the limits on the amount of damages or the reasonable provisions as to the time and manner of presenting claims set forth in applicable tariffs, e.g. a maximum unit value beyond which goods are not taken or a disclaimer of responsibility for undeclared articles of extraordinary value.

3. As under former Section 7-309(2), subsection (b) provides that a limitation of damages is ineffective if the carrier has converted the goods to its own use. A mere failure to redeliver the goods is not conversion to the carrier's own use. "Conversion to its own use" is narrower than the idea of conversion generally. *Art Masters Associates, Ltd. v. United Parcel Service*, 77 N.Y.2d 200, 567 N.E.2d 226 (1990); See, *Kemper Ins. Co. v. Fed. Ex. Corp.*, 252 F.3d 509

(1st Cir), cert. denied 534 U.S. 1020 (2001) (opinion interpreting federal law).

4. As used in this section, damages may include damages arising from delay in delivery. Delivery dates and times are often specified in the parties' contract. See Section 7-403.

Cross Reference: Sections 1-302, 7-103, 7-204, 7-403.

Definitional Cross References: "Action". Section 1-201.

"Bill of lading". Section 1-201.

"Carrier". Section 7-102.

"Consignor". Section 7-102.

"Document of Title". Section 1-102.

"Goods". Section 7-102.

"Value". Section 1-204.

Part 4. Warehouse Receipts and Bills of Lading: General Obligations.

§ 28:7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-401.

Changes: Changes for style only.

Purposes: The bailee's liability on its document despite non-receipt or misdescription of the goods is affirmed in Sections 7-203 and 7-301. The purpose of this section is to make it clear that regardless of irregularities a document which falls within the definition of document of title imposes on the issuer the obligations stated in this Article. For example, a bailee will not be permitted to avoid its obligation to deliver the goods (Section 7-403) or its obligation of due care with respect to them (Sections 7-204 and 7-309) by taking the position that no valid "document" was issued because it failed to file a statutory bond or did not pay stamp taxes or did not disclose the place of

storage in the document. *Tate v. Action Moving & Storage, Inc.*, 383 S.E.2d 229 (N.C. App. 1989), *rev. denied* 389 S.E.2d 104 (N.C. 1990). Sanctions against violations of statutory or administrative duties with respect to documents should be limited to revocation of license or other measures prescribed by the regulation imposing the duty. See Section 7-103.

Cross References: Sections 7-103, 7-203, 7-204, 7-301, 7-309.

Definitional Cross References: "Bailee". Section 7-102.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Issuer". Section 7-102.

"Person". Section 1-201.

"Warehouse receipt". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to § 28:7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-401.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-402.

Changes: Changes to accommodate electronic documents.

Purposes: 1. This section treats a duplicate which is not properly identified as a duplicate like any other overissue of documents: a purchaser of such a document acquires no title but only a cause of action for damages against the person that made the deception possible, except in the cases noted in the section. But parts of a tangible bill lawfully issued in a set of parts are not “overissue” (Section 7-304). Of course, if the issuer has clearly indicated that a document is a duplicate so that no one can be deceived by it, and in fact the duplicate is a correct copy of the original, the issuer is not liable for preparing and delivering such a duplicate copy.

Section 7-105 allows documents of title to be reissued in another medium. Re-issuance of a document in an alternative medium under Section 7-105 requires that the original document be surrendered to the issuer in order to make the substitute document the effective document. If the substitute document is not issued in compliance with section 7-105, then the document should be treated as a duplicate under this section.

2. The section applies to nonnegotiable documents to the extent of providing an action for damages for one who acquires an unmarked duplicate from a transferor who knew the facts and would therefore have had no cause of

action against the issuer of the duplicate. Ordinarily the transferee of a nonnegotiable document acquires only the rights of its transferor.

3. Overissue is defined so as to exclude the common situation where two valid documents of different issuers are outstanding for the same goods at the same time. Thus freight forwarders commonly issue bills of lading to their customers for small shipments to be combined into carload shipments for which the railroad will issue a bill of lading to the forwarder. So also a warehouse receipt may be outstanding against goods, and the holder of the receipt may issue delivery orders against the same goods. In these cases dealings with the subsequently issued documents may be effective to transfer title; e.g. negotiation of a delivery order will effectively transfer title in the ordinary case where no dishonesty has occurred and the goods are available to satisfy the orders. Section 7-503 provides for cases of conflict between documents of different issuers.

Cross References: Point 1: Sections 7-105, 7-207, 7-304, and 7-601.

Point 3: Section 7-503.

Definitional Cross References: “Bill of lading”. Section 1-201.

“Conspicuous”. Section 1-201.

“Document of title”. Section 1-201.

“Fungible goods.” Section 1-201.

“Goods”. Section 7-102.

“Issuer”. Section 7-102.

“Right”. Section 1-201.

§ 28:7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this section, unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to § 28:2-705 or by a lessor of its right to stop delivery pursuant to § 28:2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to § 28:7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under § 28:7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

(Dec. 30, 1963, 77 Stat. 727, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-202, § 28:7-209, and § 28:7-503.

Legislative history of Law 19-299. — See note to § 28:7-401.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-403.

Changes: Definition in former Section 7-403(4) moved to Section 7-102; bracketed language in former Section 7-403(1)(b) deleted; added cross reference to Section 2A-526; changes for style.

Purposes: 1. The present section, following former Section 7-403, is constructed on the basis of stating what previous deliveries or other circumstances operate to excuse the bailee's normal obligation on the document. Accordingly, "justified" deliveries under the pre-Code uniform acts now find their place as "excuse" under subsection (a).

2. The principal case covered by subsection (a)(1) is delivery to a person whose title is paramount to the rights represented by the document. For example, if a thief deposits stolen goods in a warehouse facility and takes a

negotiable receipt, the warehouse is not liable on the receipt if it has surrendered the goods to the true owner, even though the receipt is held by a good faith purchaser. See Section 7-503(a). However, if the owner entrusted the goods to a person with power of disposition, and that person deposited the goods and took a negotiable document, the owner receiving delivery would not be rightful as against a holder to whom the negotiable document was duly negotiated, and delivery to the owner would not give the bailee a defense against such a holder. See Sections 7-502(a)(2), 7-503(a)(1).

3. Subsection (a)(2) amounts to a cross reference to all the tort law that determines the varying responsibilities and standards of care applicable to commercial bailees. A restatement of this tort law would be beyond the scope of this Act. Much of the applicable law as to responsibility of bailees for the preservation of

the goods and limitation of liability in case of loss has been codified for particular classes of bailees in interstate and foreign commerce by federal legislation and treaty and for intrastate carriers and other bailees by the regulatory state laws preserved by Section 7-103. In the absence of governing legislation the common law will prevail subject to the minimum standard of reasonable care prescribed by Sections 7-204 and 7-309 of this Article.

The bracketed language found in former Section 7-403(1)(b) has been deleted thereby leaving the allocations of the burden of going forward with the evidence and the burden of proof to the procedural law of the various states.

Subsection (a)(4) contains a cross reference to both the seller's and the lessor's rights to stop delivery under Article 2 and Article 2A respectively.

4. As under former Section 7-403, there is no requirement that a request for delivery must be accompanied by a formal tender of the amount of the charges due. Rather, the bailee must request payment of the amount of its lien when asked to deliver, and only in case this request is refused is it justified in declining to deliver because of nonpayment of charges. Where delivery without payment is forbidden by law, the request is treated as implicit. Such a prohibition reflects a policy of uniformity to prevent discrimination by failure to request payment in particular cases. Subsection (b) must be read in conjunction with the priorities given to the warehouse lien and the carrier lien under Section 7-209 and 7-307, respectively. If the parties are in dispute about whether the request for

payment of the lien is legally proper, the bailee may have recourse to interpleader. See Section 7-603.

5. Subsection (c) states the obvious duty of a bailee to take up a negotiable document or note partial deliveries conspicuously thereon, and the result of failure in that duty. It is subject to only one exception, that stated in subsection (a)(1) of this section and in Section 7-503(a). Subsection (c) is limited to cases of delivery to a claimant; it has no application, for example, where goods held under a negotiable document are lawfully sold to enforce the bailee's lien.

6. When courts are considering subsection (a)(7), "any other lawful excuse," among others, refers to compliance with court orders under Sections 7-601, 7-602 and 7-603.

Cross References: Point 2: Sections 7-502 and 7-503.

Point 3: Sections 2-705, 2A-526, 7-103, 7-204, and 7-309 and 10-103.

Point 4: Sections 7-209, 7-307 and 7-603.

Point 5: Section 7-503(1).

Point 6: Sections 7-601, 7-602, and 7-603.

Definitional Cross References: "Bailee". Section 7-102.

"Conspicuous". Section 1-201.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Lessor". Section 2A-103.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Right". Section 1-201.

"Terms". Section 1-201.

"Warehouse". Section 7-102.

§ 28:7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-401.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-404.

Changes: Changes reflect the definition of good faith in Section 1-201 [7-102] and for style.

Purposes: This section uses the test of good faith, as defined in Section 1-201 [7-102], to continue the policy of former Section 7-404. Good faith now means "honesty in fact and the observance of reasonable commercial standards of fair dealing." The section states explicitly that the common law rule of "innocent conversion" by unauthorized "intermeddling" with another's property is inapplicable to the operations of commercial carriers and warehousemen that in good faith perform obligations that they have assumed and that generally they are under a legal compulsion to assume. The section applies to delivery to a fraudulent holder of a valid document as well

as to delivery to the holder of an invalid document. Of course, in appropriate circumstances, a bailee may use interpleader or other dispute resolution process. See Section 7-603.

Cross Reference: Section 7-603.

Definitional Cross References: "Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Person". Section 1-201.

"Receipt of goods". Section 2-103.

"Term". Section 1-201.

Part 5. Warehouse Receipts and Bills of Lading: Negotiation and Transfer.

§ 28:7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value,

unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28-4915.

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was

adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-501.

Changes: To accommodate negotiable electronic documents of title.

Purpose: 1. Subsection (a) has been limited to tangible negotiable documents of title but otherwise remains unchanged in substance from the rules in former Section 7-501. Subsection (b) is new and applies to negotiable electronic documents of title. Delivery of a negotiable electronic document is through voluntary transfer of control. Section 1-201 definition of "delivery." The control concept as applied to negotiable electronic documents of title is the substitute for both possession and indorsement as applied to negotiable tangible documents of title. Section 7-106.

Article 7 does not separately define the term "duly negotiated." However, the elements of "duly negotiated" are set forth in subsection (a)(5) for tangible documents and (b)(3) for electronic documents. As under former Section 7-501, in order to effect a "due negotiation" the negotiation must be in the "regular course of business or financing" in order to transfer greater rights than those held by the person negotiating. The foundation of the mercantile doctrine of good faith purchase for value has always been, as shown by the case situations, the furtherance and protection of the regular course of trade. The reason for allowing a person, in bad faith or in error, to convey away rights which are not its own has from the beginning been to make possible the speedy handling of that great run of commercial transactions which are patently usual and normal.

There are two aspects to the usual and normal course of mercantile dealings, namely, the

person making the transfer and the nature of the transaction itself. The first question which arises is: Is the transferor a person with whom it is reasonable to deal as having full powers? In regard to documents of title the only holder whose possession or control appears, commercially, to be in order is almost invariably a person in the trade. No commercial purpose is served by allowing a tramp or a professor to "duly negotiate" an order bill of lading for hides or cotton not their own, and since such a transfer is obviously not in the regular course of business, it is excluded from the scope of the protection of subsections (a)(5) or (b)(3).

The second question posed by the "regular course" qualification is: Is the transaction one which is normally proper to pass full rights without inquiry, even though the transferor itself may not have such rights to pass, and even though the transferor may be acting in breach of duty? In raising this question the "regular course" criterion has the further advantage of limiting, the effective wrongful disposition to transactions whose protection will really further trade. Obviously, the snapping up of goods for quick resale at a price suspiciously below the market deserves no protection as a matter of policy: it is also clearly outside the range of regular course.

Any notice on the document sufficient to put a merchant on inquiry as to the "regular course" quality of the transaction will frustrate a "due negotiation". Thus irregularity of the document or unexplained staleness of a bill of lading may appropriately be recognized as negating a negotiation in "regular" course.

A pre-existing claim constitutes value, and "due negotiation" does not require "new value."

A usual and ordinary transaction in which documents are received as security for credit previously extended may be in "regular" course, even though there is a demand for additional collateral because the creditor "deems himself insecure." But the matter has moved out of the regular course of financing if the debtor is thought to be insolvent, the credit previously extended is in effect cancelled, and the creditor snatches a plank in the shipwreck under the guise of a demand for additional collateral. Where a money debt is "paid" in commodity paper, any question of "regular" course disappears, as the case is explicitly excepted from "due negotiation".

2. Negotiation under this section may be made by any holder no matter how the holder acquired possession or control of the document.

3. Subsections (a)(3) and (b)(2) make explicit a matter upon which the intent of the pre-Code law was clear but the language somewhat obscure: a negotiation results from a delivery to a banker or buyer to whose order the document has been taken by the person making the bailment. There is no presumption of irregularity in such a negotiation; it may very well be in "regular course."

4. This Article does not contain any provision creating a presumption of due negotiation to, and full rights in, a holder of a document of title akin to that created by Uniform Commercial

Code Article 3. But the reason of the provisions of this Act (Section 1-307) on the prima facie authenticity and accuracy of third party documents, joins with the reason of the present section to work such a presumption in favor of any person who has power to make a due negotiation. It would not make sense for this Act to authorize a purchaser to indulge the presumption of regularity if the courts were not also called upon to do so. Allocations of the burden of going forward with the evidence and the burden of proof are left to the procedural law of the various states.

5. Subsections (c) and (d) are unchanged from prior law and apply to both tangible and electronic documents of title.

Cross References: Sections 1-307, 7-502 and 7-503.

Definitional Cross References: "Bearer". Section 1-201.

"Control". Section 7-106.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section 1-201 [7-102].

"Holder". Section 1-201.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Rights". Section 1-201.

"Term". Section 1-201.

"Value". Section 1-204.

§ 28:7-502. Rights acquired by due negotiation.

(a) Subject to §§ 28:7-205 and 28:7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

- (1) Title to the document;
- (2) Title to the goods;
- (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and
- (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to § 28:7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

- (1) The due negotiation or any prior due negotiation constituted a breach of duty;
- (2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person.

(Dec. 30, 1963, 77 Stat. 728, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-502.

Changes: To accommodate electronic documents of title and for style.

Purpose: 1. This section applies to both tangible and electronic documents of title. The elements of duly negotiated, which constitutes a due negotiation, are set forth in Section 7-501. The several necessary qualifications of the broad principle that the holder of a document acquired in a due negotiation is the owner of the document and the goods have been brought together in the next section (Section 7-503).

2. Subsection (a)(3) covers the case of “feeding” of a duly negotiated document by subsequent delivery to the bailee of such goods as the document falsely purported to cover; the bailee in such case is estopped as against the holder of the document.

3. The explicit statement in subsection (a)(4) of the bailee’s direct obligation to the holder precludes the defense that the document in question was “spent” after the carrier had delivered the goods to a previous holder. But the holder is subject to such defenses as non-negligent destruction even though not apparent on the document. The sentence on delivery orders applies only to delivery orders in negotiable form which have been duly negotiated. On delivery orders, see also Section 7-503(b) and Comment.

4. Subsection (b) continues the law which gave full effect to the issuance or due negotiation of a negotiable document. The subsection adds nothing to the effect of the rules stated in subsection (a), but it has been included since such explicit reference was provided under former Section 7-502 to preserve the right of a purchaser by due negotiation. The listing is not exhaustive. The language “any stoppage” is included lest an inference be drawn that a stoppage of the goods before or after transit might cut off or otherwise impair the purchaser’s rights.

Cross References: Sections 7-103, 7-205, 7-403, 7-501, and 7-503.

Definitional Cross References: “Bailee”. Section 7-102.

“Control”. Section 7-106.

“Delivery”. Section 1-201.

“Delivery order”. Section 7-102.

“Document of title”. Section 1-201.

“Duly negotiate”. Section 7-501.

“Fungible”. Section 1-201.

“Goods”. Section 7-102.

“Holder”. Section 1-201.

“Issuer”. Section 7-102.

“Person”. Section 1-201.

“Rights”. Section 1-201.

“Term”. Section 1-201.

“Warehouse receipt”. Section 1-201.

§ 28:7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor’s nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under § 28:7-403; or

(C) Power of disposition under § 28:2-403, 28:2A-304, 28:2A-305, 28:9-320, or 28:9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under § 28:7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

(Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1; Oct. 26, 2000, D.C. Law 13-201, § 201(h), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-403 and § 28:7-502.

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-503.

Changes: Changes to cross-reference to Article 2A and for style.

Purposes: 1. In general it may be said that the title of a purchaser by due negotiation prevails over almost any interest in the goods which existed prior to the procurement of the document of title if the possession of the goods by the person obtaining the document derived from any action by the prior claimant which introduced the goods into the stream of commerce or carried them along that stream. A thief of the goods cannot indeed by shipping or storing them to the thief's own order acquire power to transfer them to a good faith purchaser. Nor can a tenant or mortgagor defeat any rights of a landlord or mortgagee which have been perfected under the local law merely by wrongfully shipping or storing a portion of the crop or other goods. However, "acquiescence" by the landlord or mortgagee does not require active consent under subsection (a)(2) and knowledge of the likelihood of storage or shipment with no objection or effort to control it is sufficient to defeat the landlord's or the mortgagee's rights as against one who takes by due negotiation of a negotiable document. In re Sharon Steel, 176 B.R. 384 (Bankr. W.D. Pa. 1995); In re R.V. Segars Co, 54 B.R. 170 (Bankr. S.C. 1985); In re Jamestown Elevators, Inc., 49 B.R. 661 (Bankr. N.D. 1985).

On the other hand, where goods are delivered to a factor for sale, even though the factor has made no advances and is limited in its duty to sell for cash, the goods are "entrusted" to the factor "with actual. . . authority. . . to sell" under subsection (a)(1), and if the factor procures a

negotiable document of title it can transfer the owner's interest to a purchaser by due negotiation. Further, where the factor is in the business of selling, goods entrusted to it simply for safekeeping or storage may be entrusted under circumstances which give the factor "apparent authority to ship, store or sell" under subsection (a)(1), or power of disposition under Section 2-403, 2A-304(2), 2A-305(2), 7-205, 9-320, or 9-321(c) or under a statute such as the earlier Factors Acts, or under a rule of law giving effect to apparent ownership. See Section 1-103.

Persons having an interest in goods also frequently deliver or entrust them to agents or servants other than factors for the purpose of shipping or warehousing or under circumstances reasonably contemplating such action. This Act is clear that such persons assume full risk that the agent to whom the goods are so delivered may ship or store in breach of duty, take a document to the agent's own order and then proceed to misappropriate the negotiable document of title that embodies the goods. This Act makes no distinction between possession or mere custody in such situations and finds no exception in the case of larceny by a bailee or the like. The safeguard in such situations lies in the requirement that a due negotiation can occur only "in the regular course of business or financing" and that the purchase be in good faith and without notice. See Section 7-501. Documents of title have no market among the commercially inexperienced and the commercially experienced do not take them without inquiry from persons known to be truck drivers or petty clerks even though such persons purport to be operating in their own names.

Again, where the seller allows a buyer to receive goods under a contract for sale, though as a "conditional delivery" or under "cash sale" terms and on explicit agreement for immediate payment, the buyer thereby acquires power to defeat the seller's interest by transfer of the goods to certain good faith purchasers. See Section 2-403. Both in policy and under the language of subsection (a)(1) that same power must be extended to accomplish the same result if the buyer procures a negotiable document of title to the goods and duly negotiates it.

This comment 1 should be considered in interpreting delivery, entrustment or acquiescence in application of Section 7-209(c).

2. Under subsection (a) a delivery order issued by a person having no right in or power over the goods is ineffective unless the owner acts as provided in subsection (a)(1) or (2). Thus the rights of a transferee of a non-negotiable warehouse receipt can be defeated by a delivery order subsequently issued by the transferor only if the transferee "delivers or entrusts" to the "person procuring" the delivery order or "acquiesces" in that person's procurement. Similarly, a second delivery order issued by the same issuer for the same goods will ordinarily be subject to the first, both under this section and under Section 7-402. After a delivery order is validly issued but before it is accepted, it may nevertheless be defeated under subsection (b) in much the same way that the rights of a

transferee may be defeated under Section 7-504. For example, a buyer in ordinary course from the issuer may defeat the rights of the holder of a prior delivery order if the bailee receives notification of the buyer's rights before notification of the holder's rights. Section 7-504(b)(2). But an accepted delivery order has the same effect as a document issued by the bailee.

3. Under subsection (c) a bill of lading issued to a freight forwarder is subordinated to the freight forwarder's document of title, since the bill on its face gives notice of the fact that a freight forwarder is in the picture and the freight forwarder has in all probability issued a document of title. But the carrier is protected in following the terms of its own bill of lading.

Cross References: Point 1: Sections 1-103, 2-403, 2A-304(2), 2A-305(2), 7-205, 7-209, 7-501, 9-320, 9-321(c), and 9-331.

Point 2: Sections 7-402 and 7-504.

Point 3: Sections 7-402, 7-403 and 7-404.

Definitional Cross References: "Bill of lading". Section 1-201.

"Contract for sale". Section 2-106.

"Delivery". Section 1-201.

"Delivery order". Section 7-102.

"Document of title". Section 1-201.

"Duly negotiate". Section 7-501.

"Goods". Section 7-102.

"Person". Section 1-201.

"Right". Section 1-201.

"Warehouse receipt". Section 1-201.

§ 28:7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under § 28:2-402 or § 28:2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been

delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 28:2-705 or a lessor under § 28:2A-526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

(Dec. 30, 1963, 77 Stat. 729, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-503.

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-504.

Changes: To include cross-references to Article 2A and for style.

Purposes: 1. Under the general principles controlling negotiable documents, it is clear that in the absence of due negotiation a transferor cannot convey greater rights than the transferor has, even when the negotiation is formally perfect. This section recognizes the transferor's power to transfer rights which the transferor has or has "actual authority to convey." Thus, where a negotiable document of title is being transferred the operation of the principle of estoppel is not recognized, as contrasted with situations involving the transfer of the goods themselves. (Compare Section 2-403 on good faith purchase of goods.) This section applies to both tangible and electronic documents of title.

A necessary part of the price for the protection of regular dealings with negotiable documents of title is an insistence that no dealing which is in any way irregular shall be recognized as a good faith purchase of the document or of any rights pertaining to it. So, where the transfer of a negotiable document fails as a negotiation because a requisite indorsement is forged or otherwise missing, the purchaser in good faith and for value may be in the anomalous position of having less rights, in part, than if the purchaser had purchased the goods themselves. True, the purchaser's rights are not subject to defeat by attachment of the goods or surrender of them to the purchaser's transferor (contrast subsection (b)); but on the other hand, the purchaser cannot acquire enforceable rights to control or receive the goods over the bailee's objection merely by giving notice to the bailee. Similarly, a consignee who makes payment to its consignor against a straight bill of lading can thereby acquire the position of a

good faith purchaser of goods under provisions of the Article of this Act on Sales (Section 2-403), whereas the same payment made in good faith against an unendorsed order bill would not have such effect. The appropriate remedy of a purchaser in such a situation is to regularize its status by compelling indorsement of the document (see Section 7-506).

2. As in the case of transfer—as opposed to "due negotiation"—of negotiable documents, subsection (a) empowers the transferor of a nonnegotiable document to transfer only such rights as the transferor has or has "actual authority" to convey. In contrast to situations involving the goods themselves the operation of estoppel or agency principles is not here recognized to enable the transferor to convey greater rights than the transferor actually has. Subsection (b) makes it clear, however, that the transferee of a nonnegotiable document may acquire rights greater in some respects than those of his transferor by giving notice of the transfer to the bailee. New subsection (b)(3) provides for the rights of a lessee in the ordinary course.

Subsection (b)(2)&(3) require delivery of the goods. Delivery of the goods means the voluntary transfer of physical possession of the goods. See amended 2-103.

3. Subsection (c) is in part a reiteration of the carrier's immunity from liability if it honors instructions of the consignor to divert, but there is added a provision protecting the title of the substituted consignee if the latter is a buyer in ordinary course of business. A typical situation would be where a manufacturer, having shipped a lot of standardized goods to A on nonnegotiable bill of lading, diverts the goods to customer B who pays for them. Under pre-Code passage-of-title-by-appropriation doctrine A might reclaim the goods from B. However, no consideration of commercial policy supports this involvement of an innocent third party in

the default of the manufacturer on his contract to A; and the common commercial practice of diverting goods in transit suggests a trade understanding in accordance with this subsection. The same result should obtain if the substituted consignee is a lessee in ordinary course. The extent of the lessee's interest in the goods is less than a buyer's interest in the goods. However, as against the first consignee and the lessee in ordinary course as the substituted consignee, the lessee's rights in the goods as granted under the lease are superior to the first consignee's rights.

4. Subsection (d) gives the carrier an express right to indemnify where the carrier honors a seller's request to stop delivery.

5. Section 1-202 gives the bailee protection, if due diligence is exercised where the bailee's organization has not had time to act on a notification.

Cross References: Point 1: Sections 2-403 and 7-506.

Point 2: Sections 2-403 and 2A-304.

Point 3: Sections 7-303, 7-403(a)(5) and 7-404.

Point 4: Sections 2-705 and 7-403(a)(4).

Point 5: Section 1-202.

Definitional Cross References: "Bailee". Section 7-102.

"Bill of lading". Section 1-201.

"Buyer in ordinary course of business". Section 1-201.

"Consignee". Section 7-102.

"Consignor". Section 7-102.

"Creditor". Section 1-201.

"Delivery". Section 1-201.

"Document of Title". Section 1-201.

"Duly negotiate". Section 7-501.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Honor". Section 1-201.

"Lessee in ordinary course". Section 2A-103.

"Notification". Section 1-202.

"Purchaser". Section 1-201.

"Rights". Section 1-201.

§ 28:7-505. Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-505.

Changes: Limited to tangible documents of title.

Purposes: This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. The indorsement of a tangible document of title is generally understood to be directed towards perfecting the transferee's rights rather than towards assuming additional obligations. The language of the present section, however, does not preclude the one case in which an indorsement given for value guarantees future action, namely, that in which the bailee has not yet

become liable upon the document at the time of the indorsement. Under such circumstances the indorser, of course, engages that appropriate honor of the document by the bailee will occur. See Section 7-502(a)(4) as to negotiable delivery orders. However, even in such a case, once the bailee attorns to the transferee, the indorser's obligation has been fulfilled and the policy of this section excludes any continuing obligation on the part of the indorser for the bailee's ultimate actual performance.

Cross Reference: Sections 7-106 and 7-502.

Definitional Cross References: "Bailee". Section 7-102.

"Document of title". Section 1-201.

"Party". Section 1-201.

§ 28:7-506. Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-506.

Changes: Limited to tangible documents of title.

Purposes: 1. This section is limited to tangible documents of title as the concept of indorsement is irrelevant to electronic documents of title. Electronic documents of title will be transferred by delivery of control. Section 7-106. From a commercial point of view the intention to transfer a tangible negotiable document of title which requires an indorsement for its transfer, is incompatible with an intention to withhold such indorsement and so defeat the effective use of the document. Further, the preceding section and the Comment thereto make it clear that an indorsement generally imposes no responsibility on the indorser.

2. Although this section provides that deliv-

ery of a tangible document of title without the necessary indorsement is effective as a transfer, the transferee, of course, has not regularized its position until such indorsement is supplied. Until this is done the transferee cannot claim rights under due negotiation within the requirements of this Article (Section 7-501(a)(5)) on "due negotiation". Similarly, despite the transfer to the transferee of the transferor's title, the transferee cannot demand the goods from the bailee until the negotiation has been completed and the document is in proper form for surrender. See Section 7-403(c).

Cross References: Point 1: Sections 7-106 and 7-505.

Point 2: Sections 7-501(a)(5) and 7-403(c).

Definitional Cross References: "Document of title". Section 1-201.
"Rights". Section 1-201.

§ 28:7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, other than as a mere intermediary under § 28:7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

- (1) The document is genuine;
- (2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and
- (3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-507.

Changes: Substitution of the word “delivery” for the word “transfer,” reference leasing transactions and style.

Purposes: 1. Delivery of goods by use of a document of title does not limit or displace the ordinary obligations of a seller or lessor as to any warranties regarding the goods that arises under other law. If the transfer of documents attends or follows the making of a contract for the sale or lease of goods, the general obligations on warranties as to the goods (Sections 2-312 through 2-318 and Sections 2A-210 through 2A-316) are brought to bear as well as the special warranties under this section.

2. The limited warranties of a delivering or collecting intermediary, including a collecting bank, are stated in Section 7-508.

Cross References: Point 1: Sections 2-312 through 2-318 and 2A-310-through 2A-316.

Point 2: Section 7-508.

Definitional Cross References: “Delivery”. Section 1-201.

“Document of title”. Section 1-201.

“Genuine”. Section 1-201.

“Goods”. Section 7-102.

“Person”. Section 1-201.

“Purchaser”. Section 1-201.

“Value”. Section 1-204.

§ 28:7-508. Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Section references. — This section is referenced in § 28:7-507.

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-508.

Changes: Changes for style only.

Purposes: 1. To state the limited warranties given with respect to the documents accompanying a documentary draft.

2. In warranting its authority a collecting bank or other intermediary only warrants its authority from its transferor. See Section 4-203. It does not warrant the genuineness or effectiveness of the document. Compare Section 7-507.

3. Other duties and rights of banks handling

documentary drafts for collection are stated in Article 4, Part 5. On the meaning of draft, see Section 4-104 and Section 5-102, comment 11.

Cross References: Sections 4-104, 4-203, 4-501 through 4-504, 5-102, and 7-507.

Definitional Cross References: “Collecting bank”. Section 4-105.

“Delivery”. Section 1-201.

“Document of title”. Section 1-102.

“Documentary draft”. Section 4-104.

“Intermediary bank”. Section 4-105.

“Good faith”. Section 1-201 [7-102].

§ 28:7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-501.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-509.

Cross References: Articles 2, 2A and 5.

Definitional Cross References: “Contract for sale”. Section 2-106.

Changes: To reference Article 2A.

Purposes: To cross-refer to the Articles of this Act which deal with the substantive issues of the type of document of title required under the contract entered into by the parties.

“Document of title”. Section 1-201.

“Lease”. Section 2A-103.

Part 6. Warehouse Receipts and Bills of Lading: Miscellaneous Provisions.

§ 28:7-601. Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting of security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

(Dec. 30, 1963, 77 Stat. 730, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provision: Former Section 7-601.

Changes: To accommodate electronic documents; to provide flexibility to courts similar to the flexibility in Section 3-309; to update to the modern era of deregulation; and for style.

Purposes: 1. Subsection (a) authorizes courts to order compulsory delivery of the goods or compulsory issuance of a substitute document. Compare Section 7-402. Using language similar to that found in Section 3-309, courts are given discretion as to what is adequate protection when the lost, stolen or destroyed document was negotiable or whether security should be required when the lost, stolen or destroyed document was nonnegotiable. In determining whether a party is adequately protected against loss in the case of a negotiable document, the court should consider the likelihood that the party will suffer a loss. The court is also given discretion as to the bailee's costs and attorney fees. The rights and obligations of a bailee under this section depend upon whether the document of title is lost, stolen or destroyed and is in addition to the ability of the bailee to bring an action for interpleader. See Section 7-603.

2. Courts have the authority under this section to order a substitute document for either tangible or electronic documents. If the substitute document will be in a different medium than the original document, the court should fashion its order in light of the requirements of Section 7-105.

3. Subsection (b) follows prior Section 7-601 in recognizing the legality of the well-established commercial practice of bailees making delivery in good faith when they are satisfied that the claimant is the person entitled under a missing (i.e. lost, stolen, or destroyed) negotia-

ble document. Acting without a court order, the bailee remains liable on the original negotiable document and, to avoid conversion liability, the bailee may insist that the claimant provide an indemnity bond. Cf. Section 7-403.

4. Claimants on non-negotiable instruments are permitted to avail themselves of the subsection (a) procedure because straight (non-negotiable) bills of lading sometimes contain provisions that the goods shall not be delivered except upon production of the bill. If the carrier should choose to insist upon production of the bill, the consignee should have some means of compelling delivery on satisfactory proof of entitlement. Without a court order, a bailee may deliver, subject to Section 7-403, to a person claiming goods under a non-negotiable document that the same person claims is lost, stolen, or destroyed.

5. The bailee's lien should be protected when a court orders delivery of the goods pursuant to this section.

Cross References: Point 1: Sections 3-309, 7-402 and 7-603.

Point 2: Section 7-105.

Point 3: Section 7-403.

Point 4: Section 7-403.

Point 5: Sections 7-209 and 7-307.

Definitional Cross References: "Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Good faith". Section 1-201 [7-102].

"Goods". Section 7-102.

"Person". Section 1-201.

§ 28:7-602. Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

(Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-601.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provisions: Former Section 7-602.

Changes: Changes to accommodate electronic documents of title and for style.

Purposes: 1. The purpose of the section is to protect the bailee from conflicting claims of the document of title holder and the judgment creditors of the person who deposited the goods. The rights of the former prevail unless, in effect, the judgment creditors immobilize the negotiable document of title through the surrender of possession of a tangible document or control of an electronic document. However, if the document of title was issued upon deposit of the goods by a person who had no power to dispose of the goods so that the document is ineffective to pass title, judgment liens are valid to the extent of the debtor's interest in the goods.

2. The last sentence covers the possibility that the holder of a document who has been enjoined from negotiating it will violate the injunction by negotiating to an innocent purchaser for value. In such case the lien will be defeated.

Cross Reference: Sections 7-106 and 7-501 through 7-503.

Definitional Cross References: "Bailee". Section 7-102.

"Delivery". Section 1-201.

"Document of title". Section 1-201.

"Goods". Section 7-102.

"Notice". Section 1-202.

"Person". Section 1-201.

"Purchase". Section 1-201.

"Value". Section 1-204.

§ 28:7-603. Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

(Dec. 30, 1963, 77 Stat. 731, Pub. L. 88-243, § 1; Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-601.

UNIFORM COMMERCIAL CODE COMMENT

Prior Uniform Statutory Provisions: Former Section 7-603.

Changes: Changes for style only.

Purposes: 1. The section enables a bailee faced with conflicting claims to the goods to compel the claimants to litigate their claims with each other rather than with the bailee. The bailee is protected from legal liability when the bailee complies with court orders from the interpleader. See e.g. *Northwestern National Sales, Inc. v. Commercial Cold Storage, Inc.*, 162 Ga. App. 741, 293 S.E.2d. 30 (1982).

2. This section allows the bailee to bring an interpleader action but does not provide an exclusive basis for allowing interpleader. If either state or federal procedural rules allow an interpleader in other situations, the bailee may

commence an interpleader under those rules. Even in an interpleader to which this section applies, the state or federal process of interpleader applies to the bailee's action for interpleader. For example, state or federal interpleader statutes or rules may permit a bailee to protect its lien or to seek attorney's fees and costs in the interpleader action.

Cross reference: Point 1: Section 7-403.

Definitional Cross References: "Action". Section 1-201.

"Bailee". Section 7-102.

"Delivery". Section 1-201.

"Goods". Section 7-102.

"Person". Section 1-201.

"Reasonable time". Section 1-205.

Part 7. Miscellaneous Provisions.

§ 28:7-701. Applicability.

This article applies to a document of title that is issued or a bailment that arises on or after the effective date of this article. This article does not apply to a document of title that is issued or a bailment that arises before the effective date of this article even if the document of title or bailment would be subject to this article if the document of title had been issued or bailment had arisen on or after the effective date of this article. This article does not apply to a right of action that has accrued before the effective date of this article.

(Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed

by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

UNIFORM COMMERCIAL CODE COMMENT

This Act will apply prospectively only to documents of title issued or bailments that arise after the effective date of the Act.

§ 28:7-702. Savings clause.

A document of title issued or a bailment that arises before the effective date of this act and the rights, obligations, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this act as if the amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule.

(Apr. 27, 2013, D.C. Law 19-299, § 9, 60 DCR 2634.)

Legislative history of Law 19-299. — See note to § 28:7-701.

UNIFORM COMMERCIAL CODE COMMENT

This Act will apply prospectively only to documents of title issued or bailments that arise after the effective date of the Act. To the extent that issues arise based upon documents

of title or rights or obligations that arise prior to the effective date of this Act, prior law will apply to resolve those issues.

ARTICLE 8. INVESTMENT SECURITIES.

Part 1. Short Title and General Matters.

tain obligations and interests are securities or financial assets.

Sec.

28:8-102. Definitions.

28:8-103. Rules for determining whether cer-

*Part 1. Short Title and General Matters.***§ 28:8-102. Definitions.**

(a) For the purposes of this article, the term:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(A) A person that is registered as a "clearing agency" under the federal securities laws;

(B) A federal reserve bank; or

(C) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(A) Send a signed writing; or

(B) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 28:8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9)(A) "Financial asset," except as otherwise provided in § 28:8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is

of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

(B) As context requires, the term "financial asset" means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) Repealed.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(A) The security certificate specifies a person entitled to the security; and

(B) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(A) A clearing corporation; or

(B) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 28:8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer which:

(A) Is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(B) Is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(C)(i) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(ii) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this article and the sections in which they appear are:

- | | |
|------------------------------------|-------------|
| (1) "Appropriate person". | § 28:8-107. |
| (2) "Control". | § 28:8-106. |
| (3) "Delivery". | § 28:8-301. |
| (4) "Investment company security". | § 28:8-103. |
| (5) "Issuer". | § 28:8-201. |
| (6) "Overissue". | § 28:8-210. |
| (7) "Protected purchaser". | § 28:8-303. |
| (8) "Securities account". | § 28:8-501. |

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

(Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(yy), 44 DCR 1271; Apr. 27, 2013, D.C. Law 19-299, § 10(a), 60 DCR 2634.)

Section references. — This section is referenced in § 1-204.90, § 28:4-104, § 28:8-103, and § 28:9-102.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 repealed (a)(10), defining "Good faith".

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revi-

sion Act of 2012," was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. The term "investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by Article 3, even though it also meets the requirements of that article.

However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in § 28:9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless § 28:8-102(a)(9)(iii) applies.

(Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087; Oct. 26, 2000, D.C. Law 13-201, § 201(i)(1), 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 10(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:8-102.

Effect of amendments.

The 2013 amendment by D.C. Law 19-299 added (g).

Legislative history of Law 19-299. — See note to § 28:8-102.

ARTICLE 9. SECURED TRANSACTIONS.

Part 1. General Provisions

Subpart 1. Short Title, Definitions, and General Concepts

Sec.

28:9-102. Definitions and index of definitions.

28:9-105. Control of electronic chattel paper.

Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement

Subpart 1. Effectiveness and Attachment

28:9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

Subpart 2. Rights and Duties

28:9-207. Rights and duties of secured party having possession or control of collateral.

28:9-208. Additional duties of secured party having control of collateral.

Part 3. Perfection and Priority

Subpart 1. Law Governing Perfection and Priority

28:9-301. Law governing perfection and priority of security interests.

28:9-304. Law governing perfection and priority of security interests in deposit accounts.

28:9-307. Location of debtor.

Subpart 2. Perfection

Sec.

28:9-309. Security interest perfected upon attachment.

28:9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

28:9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

28:9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

28:9-313. When possession by or delivery to secured party perfects security interest without filing.

28:9-314. Perfection by control.

28:9-316. Effect of change in governing law.

Subpart 3. Priority

28:9-317. Interests that take priority over or take free of unperfected security interest or agricultural lien.

28:9-326. Priority of security interests created by new debtor.

28:9-338. Priority of security interest or agri-

cultural lien perfected by filed financing statement providing certain incorrect information.

Part 4. Rights of Third Parties

Sec.

28:9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

28:9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

Part 5. Filing

Subpart 1. Filing Office; Contents and Effectiveness of Financing Statement

28:9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

28:9-503. Name of debtor and secured party.

28:9-507. Effect of certain events on effectiveness of financing statement.

28:9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

28:9-516. What constitutes filing; effectiveness of filing.

28:9-518. Claim concerning inaccurate or wrongfully filed record.

Subpart 2. Duties and Operation of Filing Office

Sec.

28:9-521. Uniform form of written financing statement and amendment.

Part 6. Default

Subpart 1. Default and Enforcement of Security Interest

28:9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

28:9-607. Collection and enforcement by secured party.

Subchapter 8. Transition Provisions for 2012 Amendments

28:9-801. Definitions.

28:9-802. Savings clause.

28:9-803. Security interest perfected before applicability date.

28:9-804. Security interest unperfected before applicability date.

28:9-805. Effectiveness of action taken before applicability date.

28:9-806. When initial financing statement suffices to continue effectiveness of financing statement.

28:9-807. Amendment of pre-effective-date financing statement.

28:9-808. Person entitled to file initial financing statement or continuation statement.

28:9-809. Priority.

Part 1. General Provisions.

Subpart 1—Short Title, Definitions, and General Concepts.

§ 28:9-102. Definitions and index of definitions.

(a) In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account" except as used in "account for" means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (f) for the use or hire of a vessel under a charter or other contract, (vi) arising out of the use of a credit or charge card or information contained on or for use with the card, or (vii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State

or governmental unit of a State. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the

certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the sue or a credit or charge card or information contained on or for use with the card. If a transaction is evidenced both by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

- (A) Proceeds to which a security interest attaches;
- (B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

- (A) The claimant is an organization; or
- (B) The claimant is an individual and the claim:
 - (i) Arose in the course of the claimant's business or profession; and
 - (ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) “Communicate” means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) “Consignee” means a merchant to which goods are delivered in a consignment.

(20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is \$1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 28:7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to § 28:9-519(a).

(37) "Filing office" means an office designated in § 28:9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to § 28:9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 28:9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit

accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) Repealed.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization means the jurisdiction under whose law the organization is organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 28:9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor", except as used in § 28:9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 28:9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to," with respect to an individual, means:

- (A) The spouse of the individual;
- (B) A brother, brother-in-law, sister, or sister-in-law of the individual;
- (C) An ancestor or lineal descendant of the individual or the individual's spouse; or
- (D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

- (A) A person directly or indirectly controlling, controlled by, or under common control with, the organization;
- (B) An officer or director of, or a person performing similar functions with respect to, the organization;
- (C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;
- (D) The spouse of an individual described in subparagraph (A), (B), or (C) of this paragraph; or
- (E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) of this paragraph and shares the same home with the individual.

(64) "Proceeds", except as used in § 28:9-609(b), means the following property:

- (A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
- (B) Whatever is collected on, or distributed on account of, collateral;
- (C) Rights arising out of collateral;
- (D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
- (E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 28:9-620, 28:9-621, and 28:9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

- (A) Debt securities are issued;
- (B) All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation:

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with the issuance of a public organic record by, or the enactment of legislation by, the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under § 28:2-401, 2-505, 2-711(3), 2A-508(5), 4-210, or 5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) "Control" as provided in § 28:7-106 and the following definitions in other articles apply to this article:

"Applicant" § 28:5-102.

"Beneficiary" § 28:5-102.

"Broker" § 28:8-102.

"Certificated security" § 28:8-102.

"Check"	§ 28:3-104.
"Clearing corporation"	§ 28:8-102.
"Contract for sale"	§ 28:2-106.
"Customer"	§ 28:4-104.
"Entitlement holder"	§ 28:8-102.
"Financial asset"	§ 28:8-102.
"Holder in due course"	§ 28:3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	§ 28:5-102.
"Issuer" (with respect to a security)	§ 28:8-201.
"Issuer" (with respect to documents of title)	§ 28:7-102.
"Lease"	§ 28:2A-103.
"Lease agreement"	§ 28:2A-103.
"Lease contract"	§ 28:2A-103.
"Leasehold interest"	§ 28:2A-103.
"Lessee"	§ 28:2A-103.
"Lessee in ordinary course of business"	§ 28:2A-103.
"Lessor"	§ 28:2A-103.
"Lessor's residual interest"	§ 28:2A-103.
"Letter of credit"	§ 28:5-102.
"Merchant"	§ 28:2-104.
"Negotiable instrument"	§ 28:3-104.
"Nominated person"	§ 28:5-102.
"Note"	§ 28:3-104.
"Proceeds of a letter of credit"	§ 28:5-114.
"Prove"	§ 28:3-103.
"Sale"	§ 28:2-106.
"Securities account"	§ 28:8-501.
"Securities intermediary"	§ 28:8-102.
"Security"	§ 28:8-102.
"Security certificate"	§ 28:8-102.
"Security entitlement"	§ 28:8-102.
"Uncertificated security"	§ 28:8-102.

(c) Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(a), 60 DCR 2634; May 1, 2013, D.C. Law 19-302, § 2(b), 60 DCR 2688.)

Section references. — This section is referenced in § 28:2-103, § 28:2A-103, § 28:6-102, § 28:8-103, § 50-601, and § 50-1201.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 deleted "other than a security interest" following "interest" in the opening language of (a)(5); substituted "§ 28:7-201(b)" for "§ 28:7-201(2)" in (a)(30); repealed (a)(43) defining "Good faith"; added "or to be provided" at the end of (a)(46); in (b), added "Control" as provided in § 28:7-106 and at the beginning of the introductory language,

and added the definition of "Issuer" (with respect to documents of title); and made related changes.

The 2013 amendment by D.C. Law 19-302 rewrote (a)(7)(B); added the last sentence in (a)(10); added (a)(68); redesignated former (a)(68) through (a)(80) as (a)(69) through (a)(81), respectively; and rewrote (a)(71) defining "Registered organization".

Legislative history of Law 19-299. — Law 19-299, the "Uniform Commercial Code Revision Act of 2012," was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Legislative history of Law 19-302. — Law 19-302, the “Uniform Commercial Code Article 9 Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-222. The Bill

was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 5, 2013, it was assigned Act No. 19-669 and transmitted to Congress for its review. D.C. Law 19-302 became effective on May 1, 2013.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-105. Control of electronic chattel paper.

(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies subsection (a) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(c), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-203, § 28:9-207, § 28:9-208, § 28:9-314, § 28:9-330, § 28:9-601, § 40-102, § 50-601, and § 50-1201.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote the section.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement.

Subpart 1—Effectiveness and Attachment.

§ 28:9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under § 28:9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 28:8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under § 28:7-106, § 28:9-104, § 28:9-105, § 28:9-106, or § 28:9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to § 28:4-210 on the security interest of a collecting bank, § 28:5-118 on the security interest of a letter-of-credit issuer or nominated person, § 28:9-110 on a security interest arising under Article 2 or 2A, and § 28:9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 28:9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(b), 60 DCR 2634.)

Section references. — This section is referenced in § 28:4-210, § 28:5-120, § 28:9-102, § 28:9-109, § 28:9-110, § 28:9-316, § 28:9-317, § 28:9-508, § 28:9-703, § 28:9-704, and § 28:9-709.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 rewrote (b)(3)(D), which read: “The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under § 28:9-104, 28:9-

105, 28:9-106, or 28:9-107 pursuant to the debtor’s security agreement.”

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

Subpart 2—Rights and Duties.

§ 28:9-207. Rights and duties of secured party having possession or control of collateral.

(a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party’s possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

- (A) For the purpose of preserving the collateral or its value;
- (B) As permitted by an order of a court having competent jurisdiction;

or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under § 28:7-106, 28:9-104, 28:9-105, 28:9-106, or 28:9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(c), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-601 and § 28:9-602.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 inserted “28:7-106” following “under § ” in (c).

Legislative history of Law 19-299. — See note to § 28:9-203.

§ 28:9-208. Additional duties of secured party having control of collateral.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under § 28:9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under § 28:9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under § 28:9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under § 28:8-106(d)(2) or 28:9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under § 28:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(d), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-625.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added (b)(6); and made related changes.

Legislative history of Law 19-299. — See note to § 28:9-203.

Part 3. Perfection and Priority.

Subpart 1—Law Governing Perfection and Priority.

§ 28:9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in §§ 28:9-303 through 28:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(e), 60 DCR 2634.)

Section references. — This section is referenced in § 28:1-301 and § 28:9-316.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 inserted “tangible” preceding “negotiable documents” in (3).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revi-

sion Act of 2012,” was introduced in Council and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) The local law of a bank’s jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank’s jurisdiction for purposes of this part:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank’s

jurisdiction for purposes of this part, this article, or Subtitle I of Title 28, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs of this subsection applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs of this subsection applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(f), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted "its customer" for "the debtor" in (b)(1). **Legislative history of Law 19-299.** — See note to § 28:9-301.

§ 28:9-307. Location of debtor.

(a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) An debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than 1 place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a State is located in that State.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

(1) In the State that the law of the United States designates, if the law designates a State of location;

(2) In the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location, including by designating its main office, home office, or other comparable office; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) of this subsection applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(j) A foreign air carrier under the Federal Aviation Act of 1958, approved August 23, 1958 (72 Stat. 731; codified in scattered sections of the U.S. Code), as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(d), 60 DCR 2688.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 added “including by designating its main office, home office, or other comparable office” in (f)(2).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Subpart 2—Perfection.

§ 28:9-309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in § 28:9-311(b) with respect to consumer goods that are subject to a statute or treaty described in § 28:9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

- (3) A sale of a payment intangible;
- (4) A sale of a promissory note;
- (5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
- (6) A security interest arising under § 28:2-401, 2-505, 2-711(3), or 2A-508(5), until the debtor obtains possession of the collateral;
- (7) A security interest of a collecting bank arising under § 28:4-210;
- (8) A security interest of an issuer or nominated person arising under § 28:5-118;
- (9) A security interest arising in the delivery of a financial asset under § 28:9-206(c);
- (10) A security interest in investment property created by a broker or securities intermediary;
- (11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
- (12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder;
- (13) A security interest created by an assignment of a beneficial interest in a decedent's estate; and
- (14) A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(g), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-308, § 28:9-310, and § 28:9-323.

amendment by D.C. Law 19-299 added (14); and made related changes.

Legislative history of Law 19-299. — See note to § 28:9-301.

Effect of amendments. — The 2013

§ 28:9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) Except as otherwise provided in subsection (b) and § 28:9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

- (1) That is perfected under § 28:9-308(d), (e), (f), or (g);
- (2) That is perfected under § 28:9-309 when it attaches;
- (3) In property subject to a statute, regulation, or treaty described in § 28:9-311(a);
- (4) In goods in possession of a bailee which is perfected under § 28:9-312(d)(1) or (2);
- (5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under § 28:9-312(e), (f), or (g);
- (6) In collateral in the secured party's possession under § 28:9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under § 28:9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under § 28:9-314;

(9) In proceeds which is perfected under § 28:9-315; or

(10) That is perfected under § 28:9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(h), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-102, § 28:9-308, and § 28:9-311.

amendment by D.C. Law 19-299 inserted “electronic documents” in (b)(8).

Legislative history of Law 19-299. — See note to § 28:9-301.

Effect of amendments. — The 2013

§ 28:9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt § 28:9-310(a);

(2) The provisions of section 50-1201 et seq.; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and §§ 28:9-313 and 28:9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and § 28:9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(e), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-309, § 28:9-310, § 28:9-316, § 28:9-334, § 28:9-335, § 28:9-337, § 28:9-505, § 28:9-611, § 28:9-621, and § 50-1202.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 substituted “certificate-of-title statute” for “statute” in (a)(3).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in § 28:9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under § 28:9-314;

(2) And except as otherwise provided in § 28:9-308(d), a security interest in a letter-of-credit right may be perfected only by control under § 28:9-314; and

(3) A security interest in money may be perfected only by the secured party’s taking possession under § 28:9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee’s receipt of notification of the secured party’s interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for

a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(i), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-310, § 28:9-323, and § 28:9-324.

amendment by D.C. Law 19-299 inserted “or control” following “possession” in (e).

Legislative history of Law 19-299. — See note to § 28:9-301.

Effect of amendments. — The 2013

§ 28:9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 28:8-301.

(b) With respect to goods covered by a certificate of title issued by the District, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 28:9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor’s business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party’s benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party’s benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under § 28:8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or § 28:8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(j), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-203, § 28:9-310, § 28:9-311, § 28:9-312, § 28:9-316, § 28:9-320, and § 28:9-328.

amendment by D.C. Law 19-299 inserted “tangible” preceding “negotiable documents” in the first sentence of (a).

Legislative history of Law 19-299. — See note to § 28:9-301.

Effect of amendments. — The 2013

§ 28:9-314. Perfection by control.

(a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under § 28:7-106, § 28:9-104, § 28:9-105, § 28:9-106, or § 28:9-107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights, or electronic documents is perfected by control under § 28:7-106, § 28:9-104, § 28:9-105, or § 28:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under § 28:9-106 from the time the secured party obtains control and remains perfected by control until:

- (1) The secured party does not have control; and
- (2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(k), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-310, § 28:9-312, § 28:9-327, § 28:9-328, and § 28:9-329.

amendment by D.C. Law 19-299 rewrote (a) and (b).

Effect of amendments. — The 2013

Legislative history of Law 19-299. — See note to § 28:9-301.

§ 28:9-316. Effect of change in governing law.

(a) A security interest perfected pursuant to the law of the jurisdiction designated in § 28:9-301(1) or 28:9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of 4 months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction; or

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from the District remains perfected until the security interest would

have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 28:9-311(b) or 28:9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from the District; or

(2) The expiration of 4 months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of 4 months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in § 28:9-301(1) or § 28:9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) of this subsection becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 28:9-301(1) or § 28:9-305(c) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in § 28:9-301(1) or § 28:9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within 4 months after, the new debtor becomes bound under § 28:9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 28:9-301(1) or § 28:9-305(c) or the expiration of the 4-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(f), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-310, § 28:9-311, § 28:9-313, § 28:9-320, and § 28:9-326.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 substituted “Effect of” for “Continued perfection of security interest following” in the section heading; and added (h) and (i).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Subpart 3—Priority.

§ 28:9-317. Interests that take priority over or take free of unperfected security interest or agricultural lien.

- (a) A security interest or agricultural lien is subordinate to the rights of:
 - (1) A person entitled to priority under § 28:9-322; and
 - (2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:
 - (A) The security interest or agricultural lien is perfected; or
 - (B) One of the conditions specified in § 28:9-203(b)(3) is met and a financing statement covering the collateral is filed.
- (b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in §§ 28:9-320 and 28:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(l), 60 DCR 2634; May 1, 2013, D.C. Law 19-302, § 2(g), 60 DCR 2688.)

Section references. — This section is referenced in § 28:2A-307.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted “tangible documents” for “documents” in (b); and inserted “electronic documents” in (d).

The 2013 amendment by D.C. Law 19-302 substituted “certificated security” for “security certificate” in (b); and substituted “collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated

security” for “accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security” in (d).

Legislative history of Law 19-299. — See note to § 28:9-301.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-326. Priority of security interests created by new debtor.

(a) Subject to subsection (b) of this section, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of § 28:9-316(i)(1) or 28:9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filing financing statements described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor’s having become bound.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(h), 60 DCR 2688.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote (a); and substituted “described in subsection (a) of this section” for “that are effective solely under § 28:9-508” in (b).

Legislative history of Law 19-302. — See note to § 28:9-102.

§ 28:9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in § 28:9-516(b)(5) which is incorrect at the time the financing statement is filed: .

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(m), 60 DCR 2634.)

Section references. — This section is referenced in § 28:9-520.

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 substituted

“tangible chattel paper, tangible documents” for “chattel paper, documents” in (2).

Legislative history of Law 19-299. — See note to § 28:9-301.

Part 4. Rights of Third Parties.

§ 28:9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and §§ 28:2A-303 and 28:9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under § 28:9-610 or an acceptance of collateral under § 28:9-620.

(f) Except as otherwise provided in §§ 28:2A-303 and 28:9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576.)

Section references. — This section is referenced in § 28:2-210, § 28:9-209, § 28:9-401, and § 28:9-405.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 added “other than a sale pursuant to a disposition under § 28:9-610 or an acceptance of collateral under § 28:9-620” in (e).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.

(a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under § 28:9-610 or an acceptance of collateral under § 28:9-620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy

under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(j), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-401.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 added “other than a sale pursuant to a disposition under § 28:9-610 or an acceptance of collateral under § 28:9-620” in (b).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Part 5. Filing.

Subpart 1—Filing Office; Contents and Effectiveness of Financing Statement.

§ 28:9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in § 28:9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section, but:

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom § 28:9-503(a)(4) applies; and

(4) The record is recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(k), 60 DCR 2688.)

Section references. — This section is referenced in § 28:2A-309, § 28:9-102, § 28:9-109, § 28:9-512, § 28:9-514, § 28:9-515, § 28:9-520, and § 28:9-525.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote (c)(3), which read: “The record satisfies the requirements for a financing statement in this section

other than an indication that it is to be filed in the real property records; and”.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-503. Name of debtor and secured party.

(a) A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3) of this subsection, if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that

is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i) of this paragraph, indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subparagraph (A)(ii) of this paragraph, provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g) of this section, if the debtor is an individual to whom the District has issued a driver's license that has not expired, or to whom the agency of the District that issues driver's licenses has issued, instead of a driver's license, a special identification card that has not become invalid, only if the financing statement provides the name of the individual which is indicated on the driver's license or special identification card;

(5) If the debtor is an individual to whom paragraph (4) of this subsection does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B) of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the “name of the decedent” under subsection (a)(2) of this section.

(g) If the District has issued to an individual more than one driver’s license, or special identification card, of a kind described in subsection (a)(4) of this section, the one that was issued most recently is the one to which subsection (a)(4) of this section refers.

(h) In this section, the “name of the settlor or testator” means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor’s name on the public organic record most recently filed with or issued or enacted by the settlor’s jurisdiction of organization which purports to state, amend, or restate the settlor’s name; or

(2) In other cases, the name of the settlor or testator indicated in the trust’s organic record.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(1), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-502, § 28:9-506, § 28:9-507, and § 28:9-805.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote the section.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-507. Effect of certain events on effectiveness of financing statement.

(a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) of this section and § 28:9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under § 28:9-506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under § 28:9-503(a) so that the financing statement becomes seriously misleading under § 28:9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within 4 months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the filed financing

statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within 4 months after the financing statement became seriously misleading.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(m), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-508.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote (c).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of 5 years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (a) or the 30-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in § 28:9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under § 28:9-502(c) remains effective as a financing statement

filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(n), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-315, § 28:9-510, § 28:9-512, § 28:9-516, § 28:9-519, § 28:9-522, § 28:9-523, § 28:9-706, and § 28:9-806.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 substituted “filed initial financing statement” for “filed financing statement” in (f).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-516. What constitutes filing; effectiveness of filing.

(a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by § 28:9-512 or 28:9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under § 28:9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor’s surname; or

(D) In the case of a record filed or recorded in the filing office described in § 28:9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor; or

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization.

(C) If the financing statement indicates that the debtor is an organization, provide:

- (i) A type of organization for the debtor;
- (ii) A jurisdiction of organization for the debtor; or
- (iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under § 28:9-514(a) or an amendment filed under § 28:9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by § 28:9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by § 28:9-512, 28:9-514, or 28:9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(o), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-109, § 28:9-338, § 28:9-520, § 28:9-521, and § 28:9-528.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 substituted “information” for “correction” in (b)(3)(B); substituted “surname” for “last name” in (b)(3)(C); added “or” at the end of (b)(5)(A); and rewrote

(b)(5)(B), which read: “Indicate whether the debtor is an individual or an organization; or”.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-518. Claim concerning inaccurate or wrongfully filed record.

(a) A person may file in the filing office an information statement with respect to a record indexed there under the person’s name if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement under subsection (a) of this section shall:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person’s belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person’s belief that the record was wrongfully filed.

(c) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under § 28:9-509(d).

(d) An information statement under subsection (c) of this section shall:

- (1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
- (2) Indicate that it is an information statement; and
- (3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under § 28:9-509(d).

(e) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(p), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-516.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote the section.

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Subpart 2—Duties and Operation of Filing Office.

§ 28:9-521. Uniform form of written financing statement and amendment.

(a) A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in § 28:9-516(b):

“UCC FINANCING STATEMENT

“FOLLOW INSTRUCTIONS

“A. NAME & PHONE OF CONTACT AT FILER (optional)

“.....

“B. E-MAIL CONTACT AT FILER (optional)

“.....

“C. SEND ACKNOWLEDGMENT TO: (Name and Address)

“.....

“THE ABOVE SPACE IS FOR
“FILING OFFICE USE ONLY

“1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of itme 2 blank, check here [] and provide the Individual Debtor information in item 19 of the Finance Statement Addendum Form (Form UCC1Ad)

“1a. ORGANIZATION'S NAME

“.....

“OR

“1b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME
“

“ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE
NAME OF THIS DEBTOR SUFFIX
“

“1c. MAILING ADDRESS
“

“CITY STATE POSTAL CODE COUNTRY
“

“2. DEBTOR’S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor’s name; if any part of the Individual Debtor’s name will not fit in line 1b, leave all of item 1 blank, check here [] and provide the Individual Debtor information in item 10 of the Finance Statement Addendum Form (Form UCC1Ad)

“2a. ORGANIZATION’S NAME
“

“OR

“2b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME
“

“ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE
NAME OF THIS DEBTOR SUFFIX
“

“2c. MAILING ADDRESS
“

“CITY STATE POSTAL CODE COUNTRY
“

“3. SECURED PARTY’S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

“3a. ORGANIZATION’S NAME
“

“3b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME
“

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
“

“3c. MAILING ADDRESS
“

“CITY STATE POSTAL CODE COUNTRY
“

"4. COLLATERAL: This financing statement covers the following collateral:

".....

"5. Check only if applicable and check only one box:

"Collateral is ☐ held in a Trust (see Instructions)

"☐ being administered by a Decedent's Personal Representative.

"6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction

☐ A Debtor is a Transmitting Utility

"6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

"7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor

☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailer/Bailor ☐ Licensee/Licensor

"8. OPTIONAL FILER REFERENCE DATA

".....

[UCC FINANCING STATEMENT (Form UCC1)]

"UCC FINANCING STATEMENT ADDENDUM

"FOLLOW INSTRUCTIONS

"9. NAME OF FIRST DEBTOR: Same as item 1a or 1b on Financing Statement; if line 1b was left blank because Individual Debtor name did not fit, check here [].

"9a. ORGANIZATION'S NAME

".....

"OR

"9b. INDIVIDUAL'S SURNAME

".....

"FIRST PERSONAL NAME

".....

"ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

".....

.....

"THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name and enter the mailing address in line 10c)

"10a. ORGANIZATION'S NAME

".....

"OR

INDIVIDUAL'S SURNAME

"

FIRST PERSONAL NAME

"

"ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE
NAME OF THIS DEBTOR

SUFFIX

"

"10c. MAILING ADDRESS

"

CITY STATE POSTAL CODE COUNTRY

"

"11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SE-
CURED PARTY'S NAME: Provide only one name (11a or 11b)

"11a. ORGANIZATION'S NAME

"

"OR

"INDIVIDUAL'S SURNAME FIRST PERSONAL NAME

"

"ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

"

"11c. MAILING ADDRESS

"

"CITY STATE POSTAL CODE COUNTRY

"

"12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

"

"13. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded)
in the REAL ESTATE RECORDS (if applicable)

"14. This FINANCING STATEMENT:

"☐ covers timber to be cut ☐ covers as-extracted collateral ☐ is filed
as a fixture filing

"15. Name and address of a RECORD OWNER of real estate described in item
16 (if Debtor does not have a record interest):

"

"16. Description of real estate:

"

"17. MISCELLANEOUS:

".....

[UCC FINANCING STATEMENT ADDENDUM (Form UCC1Ad)]."

(b) A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in § 28:9-516(b):

"UCC FINANCING STATEMENT AMENDMENT

"FOLLOW INSTRUCTIONS

"A. NAME & PHONE OF CONTACT AT FILER (optional)

".....

"B. E-MAIL CONTACT AT FILER (optional)

".....

"C. SEND ACKNOWLEDGMENT TO: (Name and Address)

".....

"THE ABOVE SPACE IS FOR

"FILING OFFICE USE ONLY

"INITIAL FINANCING STATEMENT FILE NUMBER

".....

"1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

"Filer: attach Amendment Addendum (Form UCC3Ad) and provide Debtor's name in item 13.

"2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to the security interest(s) of

"Secured Party authorizing this Termination Statement.

"3. ☐ ASSIGNMENT (full or partial): Provide name of Assignee in item 7a or 7b, and address of Assignee in item 7c and name of Assignor in item 9. For partial assignment, complete items 7 and 9 and also indicate affected collateral in item 8

"4. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to the security interest(s) of Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law

"5. ☐ PARTY INFORMATION CHANGE:

"Check one of these two boxes:

"This Change affects ☐ Debtor or ☐ Secured Party of record.

"AND

"Check one of these three boxes to:

"☐ CHANGE name and/or address: Complete item 6a or 6b, and item 7a or 7b and item 7c.

"☐ ADD name: Complete item 7a or 7b, and item 7c.

☐ DELETE name: Give record name to be deleted in item 6a or 6b.

“6. CURRENT RECORD INFORMATION: Complete for Party Information Change — provide only one name (6a or 6b) (use exact, full name; do not omit, modify, or abbreviate any word in the Debtor’s name)

“ORGANIZATION’S NAME
“

“OR

“INDIVIDUAL’S SURNAME FIRST PERSONAL NAME
“

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
“

“7. CHANGED OR ADDED INFORMATION: Complete for Assignment or Party Information Change — provide only one name (7a or 7b) (use exact full name; do not omit, modify, or abbreviate any part of the Debtor’s name)

“7a. ORGANIZATION’S NAME
“

“OR

“7b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME
.....

“ADDITIONAL NAME(S)/INITIAL(S) THAT ARE PART OF THE NAME OF THIS DEBTOR SUFFIX
.....

“7c. MAILING ADDRESS
.....

“CITY STATE POSTAL CODE COUNTRY
“

“8. ☐ COLLATERAL CHANGE:
“Also check one of these four boxes:
“☐ ADD collateral ☐ DELETE collateral ☐ RESTATE covered collateral
“☐ ASSIGN collateral
“Indicate collateral:

“9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT — provide only one name (9a or 9b) (name of Assignor, if this is an Assignment)

“If this is an Amendment authorized by a DEBTOR, check here ☐ and provide name of authorizing Debtor
“9a. ORGANIZATION’S NAME
.....

“OR

“INDIVIDUAL’S SURNAME FIRST PERSONAL NAME

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX
 “

“10. OPTIONAL FILER REFERENCE DATA
 “

[UCC FINANCING STATEMENT AMENDMENT (Form UCC3)]

“UCC FINANCING STATEMENT AMENDMENT ADDENDUM

“FOLLOW INSTRUCTIONS

“11. INITIAL FINANCING STATEMENT FILE NUMBER (same as item
 1a on Amendment form)

“12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as
 item 9 on Amendment form)
 “12a. ORGANIZATION’S NAME

“OR

“12b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

“ THE ABOVE SPACE IS FOR
 “FILING OFFICE USE ONLY

“13. Name of DEBTOR on related financing statement (Name of a current
 Debtor of record required for indexing purposes only in some filing offices
 — see Instruction for item 13; Provide only one Debtor name (13a or 13b)
 (use exact, full name; do not omit, modify, or abbreviate any part of the
 Debtor’s name; see Instructions if name does not fit)
 “13a. ORGANIZATION’S NAME

OR

“13b. INDIVIDUAL’S SURNAME FIRST PERSONAL NAME

“ADDITIONAL NAME(S)/INITIAL(S) SUFFIX

“14. ADDITIONAL SPACE FOR ITEM 8 (Collateral)

"15. This FINANCING STATEMENT AMENDMENT: ☐ covers timber to be cut

"☐ covers as-extracted collateral ☐ is filed as a fixture filing

"16. Name and address of a RECORD OWNER of real estate described in item 17 (if Debtor does not have a record interest):

"17. Description of real estate

"18. MISCELLANEOUS:

[UCC FINANCING STATEMENT AMENDMENT ADDENDUM (Form UCC3Ad)]."

(c) A form that a filing office may not refuse to accept under subsection (a) or (b) of this section must conform to the format prescribed for the form by the National Conference of Commissioners on Uniform State Laws.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(q), 60 DCR 2688.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 rewrote (a) and (b).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

UNIFORM COMMERCIAL CODE COMMENT

1. Source. New.

2. "Safe Harbor" Written Forms. Although Section 9-520 limits the bases upon which the filing office can refuse to accept records, this section provides sample written forms that must be accepted in every filing office in the country, as long as the filing office's rules permit it to accept written communications. By completing one of the forms in this section, a secured party can be certain that the filing office is obligated to accept it.

The forms in this section are based upon national financing statement forms that were in use under former Article 9. Those forms were developed over an extended period and reflect the comments and suggestions of filing officers, secured parties and their counsel, and service companies. The formatting of those forms and of the ones in this section has been designed to reduce error by both filers and filing offices.

A filing office that accepts written communications may not reject, on grounds of form or

format, a filing using these forms. Although filers are not required to use the forms, they are encouraged and can be expected to do so, inasmuch as the forms are well designed and avoid the risk of rejection on the basis of form or format. As their use expands, the forms will rapidly become familiar to both filers and filing-office personnel. Filing offices may and should encourage the use of these forms by declaring them to be the 'standard' (but not exclusive) forms for each jurisdiction, albeit without in any way suggesting that alternative forms are unacceptable.

The multi-purpose form in subsection (b) covers changes with respect to the debtor, the secured party, the collateral, and the status of the financing statement (termination and continuation). A single form may be used for several different types of amendments at once (e.g., both to change a debtor's name and continue the effectiveness of the financing statement).

Part 6. Default.

Subpart 1—Default and Enforcement of Security Interest.

§ 28:9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) After default, a secured party has the rights provided in this part and, except as otherwise provided in § 28:9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under § 28:7-106, [§] 28:9-104, § 28:9-105, § 28:9-106, or § 28:9-107 has the rights and duties provided in § 28:9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and § 28:9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in § 28:9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; Apr. 27, 2013, D.C. Law 19-299, § 11(n), 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 inserted “28:7-106” in (b).

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 28:9-607. Collection and enforcement by secured party.

(a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under § 28:9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under § 28:9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under § 28:9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

(Oct. 26, 2000, D.C. Law 13-201, § 101, 47 DCR 7576; May 1, 2013, D.C. Law 19-302, § 2(r), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-601, § 28:9-602, and § 28:9-623.

Effect of amendments. — The 2013 amendment by D.C. Law 19-302 added "with

respect to the obligation secured by the mortgage" in (b)(2)(A).

Legislative history of Law 19-302. — See note to § 28:9-102.

Editor's notes. — Applicability of D.C. Law

19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Subchapter 8. Transition Provisions for 2012 Amendments.

§ 28:9-801. Definitions.

In this part:

(1) “Applicability date” means July 1, 2013.

(2) “2012 Act” means the Uniform Commercial Code Article 9 Amendments Act of 2012 [D.C. Law 19-302].

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — Law 19-302, the “Uniform Commercial Code Article 9 Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-222. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February

5, 2013, it was assigned Act No. 19-669 and transmitted to Congress for its review. D.C. Law 19-302 became effective on May 1, 2013.

Editor’s notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

UNIFORM COMMERCIAL CODE COMMENT

These transition provisions largely track the provisions of Part 7, which govern the transition to the 1998 revision of this Article. The Comments to the sections of Part 7 generally are relevant to the corresponding sections of Part 8. The 2010 amendments are less far-reaching than the 1998 revision. Although Part 8 does not carry forward those Part 7 provisions that clearly would have no application to the transition to the amendments, as a matter of prudence Part 8 does carry forward all Part 7 provisions that are even arguably relevant to the transition.

The most significant transition problem raised by the 2010 amendments arises from changes to Section 9-503(a), concerning the name of the debtor that must be provided for a financing statement to be sufficient. Sections 9-805 and 9-806 address this problem.

Example: On November 8, 2012, Debtor, an individual whose “individual name” is “Lon Debtor” and whose principal residence is located in State A, creates a security interest in certain manufacturing equipment. On November 15, 2012, SP perfects a security interest in the equipment under Article 9 (as in effect prior to the 2010 amendments) by filing a financing statement against “Lon Debtor” in the State A filing office. On July 1, 2013, the 2010 amendments, including Alternative A to Section 9-503(a), take effect in State A. Debtor’s unex-

pired State A driver’s indicates that Debtor’s name is “Polonius Debtor.” Assuming that a search under “Polonius Debtor” using the filing office’s standard search logic would not disclose the filed financing statement, the financing statement would be insufficient under amended Section 9-503(a)(4) (Alt. A). However, Section 9-805(b) provides that the 2010 amendments do not render the financing statement ineffective. Rather, the financing statement remains effective—even if it has become seriously misleading—until it would have ceased to be effective had the amendments not taken effect. See Section 9-805(b)(1). SP can continue the effectiveness of the financing statement by filing a continuation statement with the State A filing office. To do so, however, SP must amend Debtor’s name on the financing statement to provide the name that is sufficient under Section 9-503(a)(4) (Alt. A) at the time the continuation statement is filed. See Section 9-805(c), (e).

The most significant transition problem addressed by the 1998 revision arose from the change in the choice-of-law rules governing where to file a financing statement. The 2010 amendments do not change the choice-of-law rules. Even so, the amendments will change the place to file in a few cases, because certain entities that were not previously classified as “registered organizations” would fall within that category under the amendments.

§ 28:9-802. Savings clause.

(a) Except as otherwise provided in this part, the amendments made by the 2012 Act apply to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the applicability date.

(b) The 2012 Act does not affect an action, case, or proceeding commenced before the applicability date.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See note to § 28:9-801.

19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Editor's notes. — Applicability of D.C. Law

§ 28:9-803. Security interest perfected before applicability date.

(a) A security interest that is a perfected security interest immediately before the applicability date is a perfected security interest under Article 9 as amended by the 2012 Act if, on the applicability date, the applicable requirements for attachment and perfection under Article 9 as amended by 2012 Act are satisfied without further action.

(b) Except as otherwise provided in § 28:9-805, if, immediately before the applicability date, a security interest is a perfected security interest, but the applicable requirements for perfection under Article 9 as amended by the 2012 Act are not satisfied on the applicability date, the security interest remains perfected thereafter only if the applicable requirements for perfection under Article 9 as amended by the 2012 Act are satisfied within one year after the applicability date.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See note to § 28:9-801.

19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Editor's notes. — Applicability of D.C. Law

§ 28:9-804. Security interest unperfected before applicability date.

A security interest that is an unperfected security interest immediately before the applicability date becomes a perfected security interest:

(1) Without further action, on the applicability date, if the applicable requirements for perfection under Article 9 as amended by the 2012 Act are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See note to § 28:9-801.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided

that the act shall apply as of July 1, 2013.

§ 28:9-805. Effectiveness of action taken before applicability date.

(a) The filing of a financing statement before the applicability date is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under Article 9 as amended by the 2012 Act.

(b) The 2012 Act does not render ineffective an effective financing statement that, before the applicability date, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 as it existed before the applicability date. However, except as otherwise provided in subsections (c) and (d) of this section and § 28:9-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in the District, at the time the financing statement would have ceased to be effective had the 2012 Act not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after the applicability date does not continue the effectiveness of a financing statement filed before the applicability date. However, upon the timely filing of a continuation statement after the applicability date and in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by the 2012 Act, the effectiveness of a financing statement filed in the same office in that jurisdiction before the applicability date continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) of this section applies to a financing statement that, before the applicability date, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Article 9 as it existed before the applicability date, only to the extent that Article 9 as amended by the 2012 Act provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before the applicability date and a continuation statement filed after the applicability date only to the extent that it satisfies the requirements of this part as added by the 2012 Act for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of § 28:9-503(a)(2) as amended by the 2012 Act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to

property held in trust indicates that the collateral is held in a trust within the meaning of § 28:9-503(a)(3) as amended by the 2012 Act.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-803 and § 28:9-807.

Legislative history of Law 19-302. — See note to § 28:9-801.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-806. When initial financing statement suffices to continue effectiveness of financing statement.

(a) The filing of an initial financing statement in the office specified in § 28:9-501 continues the effectiveness of a financing statement filed before the applicability date if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under Article 9 as amended by the 2012 Act;

(2) The pre-effective-date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before the applicability date, for the period provided in § 28:9-515 as it existed before the applicability date with respect to an initial financing statement; and

(2) If the initial financing statement is filed after the applicability date, for the period provided in § 28:9-515 as amended by the 2012 Act with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of Part 5 as amended by the 2012 Act for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Section references. — This section is referenced in § 28:9-805 and § 28:9-807.

Legislative history of Law 19-302. — See note to § 28:9-801.

Editor's notes. — Applicability of D.C. Law 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

§ 28:9-807. Amendment of pre-effective-date financing statement.

(a) For the purposes of this section and § 28:9-806, “pre-effective-date financing statement” means a financing statement filed before the applicability date.

(b) After the applicability date, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Article 9 as amended by the 2012 Act. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in subsection (d) of this section, if the law of the District governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the applicability date only if:

(1) The pre-effective-date financing statement and an amendment are filed in the office specified in § 28:9-501;

(2) An amendment is filed in the office specified in § 28:9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies § 28:9-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies § 28:9-806(c) is filed in the office specified in § 28:9-501.

(d) If the law of the District governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under § 28:9-805(c) and (e) or § 28:9-806.

(e) Whether or not the law of the District governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in the District may be terminated after the applicability date by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies § 28:9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Article 9 as amended by the 2012 Act as the office in which to file a financing statement.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See 19-302: Section 4 of D.C. Law 19-302 provided that the act shall apply as of July 1, 2013.

Editor’s notes. — Applicability of D.C. Law

§ 28:9-808. Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(a) The secured party of record authorizes the filing; and “(b) The filing is necessary under this part:

(1) To continue the effectiveness of a financing statement filed before the applicability date; or

(2) To perfect or continue the perfection of a security interest.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See 19-302: Section 4 of D.C. Law 19-302 provided note to § 28:9-801. that the act shall apply as of July 1, 2013.

Editor's notes. — Applicability of D.C. Law

§ 28:9-809. Priority.

Article 9 as amended by the 2012 Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the applicability date, Article 9 as it existed before the applicability date determines priority.

(May 1, 2013, D.C. Law 19-302, § 2(s), 60 DCR 2688.)

Legislative history of Law 19-302. — See 19-302: Section 4 of D.C. Law 19-302 provided note to § 28:9-801. that the act shall apply as of July 1, 2013.

Editor's notes. — Applicability of D.C. Law

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS.

CHAPTER 23. ASSIGNMENT OF CHOSSES IN ACTION.

Sec.

28-2305. Contract to assign future salary or wages.

§ 28-2305. Contract to assign future salary or wages.

(a) A contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor, if made in the District of Columbia, is invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, is unenforceable in any court within the District of Columbia.

(b) Whoever, in the District of Columbia demands or receives from a debtor an assignment of salary or wages to be thereafter earned by the debtor, or notifies an employer that he holds an assignment of such salary or wages, upon conviction shall be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants.

(Aug. 30, 1964, 78 Stat. 670, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); June 11, 2013, D.C. Law 19-317, § 285(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$200” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 33. INTEREST AND USURY.

Sec.

28-3313. Penalties.

§ 28-3313. Penalties.

Any lender who wilfully violates any provision of this chapter shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 1 year, or both.

(Mar. 14, 1984, D.C. Law 5-62, § 4, 31 DCR 114; June 11, 2013, D.C. Law 19-317, § 285(b), 60 DCR 2064.)

Section references. — This section is referenced in § 28-3301.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 38. CONSUMER PROTECTIONS.

Subchapter I. General

Sec.

28-3817. Health spa sales.

Subchapter I. General.

§ 28-3817. Health spa sales.

(a) As used in this section, the term —

(1) “health spa” means a proposed or existing location or organization with indoor or outdoor facilities for physical sport, exercise, training, or therapy or rehabilitation. It does not include any location, the primary activity of which is training or instruction in a specific skill, such as dance, or

swimming. It does not include any location which is operated primarily by a not-for-profit organization.

(2) "health spa sale" means a cash sale or a consumer credit sale in which a health spa or affiliated organization agrees, after the effective date of this section, to provide or make available, for a period of more than 30 days, goods or services (whether or not a membership is included) for physical sport, exercise, training, therapy or rehabilitation.

(3) "buyer" means any natural person who purchases a health spa sale contract for his, or another natural person's, personal use.

(4) "seller" means the seller of a health spa sale to a buyer.

(b) Every contract containing a health spa sale shall:

(1) be in writing;

(2) if renewable in whole or part, require the buyer's separate signature and payment for renewal;

(3) provide for a buyer's right (which may not be waived) to cancel, as explained in subsection (c);

(4) in close proximity to the space reserved for the buyer's signature, and in boldface type of at least ten points, include the following statement:

"NOTICE TO THE BUYER:

You have the right to cancel this contract during the first fifteen days after the contract is made, or after the first fifteen days, if, due to death, illness, injury, or a change in residence, you are unable to use the full membership privileges in this contract. If you cancel, you will have to pay only for the goods or services you are entitled to up through the month in which you cancel, plus a registration fee of 5% of the price of this contract (not counting any finance charge), not to exceed \$25. You must notify the health spa, by certified or registered mail at the address given in this contract, of your intention to cancel, or your cancellation will not be effective. If your cancellation is due to illness or injury, a certificate from a doctor of your choice must accompany your notice of cancellation to the health spa. Contact the District of Columbia Office of Consumer Affairs if you have a question as to how to calculate your obligation or your refund after you cancel.";

(5) be presented, fully completed, to the buyer, and be signed and dated by the buyer, and then a copy, as so approved, be furnished to the buyer; and

(6) specify the seller's and the buyer's addresses.

(c)(1) The buyer, at his option, has the right to cancel a health spa sale during the first fifteen days after the sale is made, or after such fifteen days, if, due to death, illness, injury, or a change in residence, the buyer is unable to use all the goods and services provided in the sale.

(2) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer to be no longer bound by the health spa sale, and (whenever such notice is given more than 15 days after the contract is made) that, due to death, illness, injury, or a change in residence or in the location of the health spa, the buyer is unable to use all the goods or services promised in

the sale. If the cancellation is due to illness or injury, a certificate from a doctor of the consumer's choice must accompany the notice of cancellation to the health spa.

(3) Cancellation occurs when the buyer mails written notice of cancellation to the seller at the seller's address as specified in the contract, by registered or certified mail.

(4) The cancellation balance shall be calculated as follows:

(A) Divide the number of months (counting a fraction as one month) which have elapsed from the date the contract (or renewal option then in effect) became effective to the date of cancellation, by the total number of months for which such services were contracted.

(B) Multiply the contract price (or the price for the renewal period then in effect) by the quotient obtained in subparagraph (A) of this paragraph.

(C) Add to the amount obtained in subparagraph (B) of this paragraph a registration fee of 5% of the original price of the contract (not counting any finance charge), but in no case more than \$25.00.

(D) If the payment by the consumer of the contract price is financed, subtract from the amount obtained in subparagraph (C) of this paragraph the amount of interest, calculated by the method of 78ths, not yet accrued through the month of the contract during which cancellation occurs.

(E) Subtract the difference obtained in subparagraph (D) of this paragraph, or if not applicable, the amount obtained in subparagraph (C) of this paragraph, from the amount already paid by the buyer under the contract and finance agreement.

If this balance is a positive figure, it is the amount of the seller's refund to the buyer, and shall be due and payable within 15 days after the cancellation. If this balance is a negative figure, it is the amount of the buyer's obligation to the seller, and within 15 days after the cancellation, the seller shall notify the buyer of his obligation. Notice of such obligation, if given by mail, is given when it is deposited in a mail box postage prepaid and properly addressed to the buyer's address as stated in the notice of cancellation, or, if the buyer's address is not stated there, as stated in the contract.

(5) The buyer's right to cancel, as explained in this subsection, applies separately to all health spa sale contracts between the seller and the buyer.

(6) When there are two or more buyers (signatories, not necessarily beneficiaries, of the contract) of a health spa sale, the right to cancel, as explained in this subsection, is available only when all the buyers join in the notice of cancellation.

(7) After receiving notice of cancellation from the buyer, the seller shall mark his copy of the cancelled health spa sale contract "cancelled".

(d)(1) The seller shall maintain copies of all cancelled health spa sale contracts for a period of 2 years from their dates of cancellation, and such records shall be open to inspection by proper representatives of the District of Columbia Government.

(2) If a contract containing a health spa sale does not meet all the requirements of subsection (b) of this section, such health spa sale shall be void, and the buyer shall at any time be entitled to a complete refund of all payments made under that contract.

(3) Any person, company or organization which purchases a buyer's obligations under a health spa sale, makes such purchase subject to the buyer's right to cancel as explained in subsection (c) of this section, as if such person, company, or organization were the seller.

(4) The principal consumer protection agency or the Corporation Counsel of the District of Columbia Government may seek in the proper court or administrative agency an order requiring a health spa to include in all health spa sale contracts the notice required in subsection (b)(4) of this section.

(e)(1) Each health spa which contracts health spa sales for goods or services to be provided or made available at a health spa which is planned, under construction, or in operation shall be required by the Department of Consumer and Regulatory Affairs ("Department") to maintain a bond, issued by a surety company licensed to do business in the District of Columbia, in an amount not less than \$50,000, or shall file with the Department an irrevocable letter of credit or cash in that amount. A buyer of a health spa sale who suffers or sustains any loss or damage by reason of breach of contract or bankruptcy by the seller or by reason of a violation by the seller of the provisions of this act [this section] may bring an action based on the bond and recover against the surety, the liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Department for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(2) A health spa which states in writing, at the time it registers with the Department pursuant to subsection (f) of this section, that it will make health spa sales to no more than 100 persons, shall for as long as it abides by the agreement be required to purchase a surety bond in the amount of \$25,000 or to file with the Department an irrevocable letter of credit or cash in that amount.

(3) Each health spa, prior to making or contracting for any health spa sale, shall complete the registration required by subsection (f) of this section and shall file with the Department evidence that the bond or letter of credit is in force or shall file cash in lieu of the bond or letter of credit. Each health spa obtaining a bond or letter of credit shall file annually with the Department evidence that the bond or letter of credit remains in force, and shall maintain accurate records of the bond and premium payments on it, or of the letter of credit. These records shall be open to inspection by the Department at any time during normal business hours.

(f)(1) Each person or health spa which makes health spa sales in the District of Columbia shall register with the Department on forms provided by the Department. The person or health spa shall furnish the full name and address of each business location where health spa sales are contracted, a financial statement, and any other information the department deems appropriate.

(2) Each seller of health spa sales in the District of Columbia shall designate a resident of the District of Columbia to serve as resident agent for receipt of service of process.

(g) Any person or health spa which makes or contracts to make any health spa sale in violation of subsection (e)(3) of this section shall be subject to a fine

of not less than \$1,000 and not more than the amount set forth in [§ 22-3571.01].

(h) The Department may bring an action to enjoin the sale of health spa memberships by any health spa which fails to comply with subsection (e)(3) of this section.

(Apr. 15, 1976, D.C. Law 1-62, § 2(a), 22 DCR 6044; Mar. 13, 1985, D.C. Law 5-138, § 2, 31 DCR 5747; Apr. 9, 1997, D.C. Law 11-255, § 27(r), 44 DCR 1271; June 11, 2013, D.C. Law 19-317, § 285(c), 60 DCR 2064.)

Section references. — This section is referenced in § 28-3909.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (g).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 39. CONSUMER PROTECTION PROCEDURES.

Sec.
28-3901. Definitions and purposes.
28-3904. Unlawful trade practices.

Sec.
28-3905. Complaint procedures.

§ 28-3901. Definitions and purposes.

(a) As used in this chapter, the term —

(1) “person” means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized;

(2) “consumer” means:

(A) When used as a noun, a person who, other than for purposes of resale, does or would purchase, lease (as lessee), or receive consumer goods or services, including as a co-obligor or surety, or does or would otherwise provide the economic demand for a trade practice;

(B) When used as an adjective, describes anything, without exception, that:

(i) A person does or would purchase, lease (as lessee), or receive and normally use for personal, household, or family purposes; or

(ii) A person described in § 28-3905(k)(1)(B) or (C) purchases or receives in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

(3) “merchant” means a person, whether organized or operating for profit or for a nonprofit purpose, who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services, or a person who in the ordinary course of business does or would

supply the goods or services which are or would be the subject matter of a trade practice;

(4) "complainant" means one or more consumers who took part in a trade practice, or one or more persons acting on behalf of (not the legal representative or other counsel of) such consumers, or the successors or assigns of such consumers or persons, once such consumers or persons complain to the Department about the trade practice;

(5) "respondent" means one or more merchants alleged by a complainant to have taken part in or carried out a trade practice, or the successors or assigns of such merchants, and includes other persons who may be deemed legally responsible for the trade practice;

(6) "trade practice" means any act which does or would create, alter, repair, furnish, make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services;

(7) "goods and services" means any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types;

(8) "Department" means the Department of Consumer and Regulatory Affairs;

(9) "Director" means the Director of the Department of Consumer and Regulatory Affairs;

(10) "Chief of the Office of Compliance" means the senior administrative officer of the Department's Office of Compliance who is delegated the responsibility of carrying out certain duties specified under section 28-3905;

(11) "Office of Adjudication" means the Department's Office of Adjudication which is responsible for carrying out certain duties specified under section 28-3905;

(12) "Office of Consumer Protection" means the Department's Office of Consumer Protection which is responsible for carrying out the statutory requirements set forth in § 28-3906; and

(13) "Committee" means the Advisory Committee on Consumer Protection which is responsible for carrying out the statutory requirements set forth in section 28-3907.

(14) "nonprofit organization" means a person who:

(A) Is not an individual; and

(B) Is neither organized nor operating, in whole or in significant part, for profit.

(15) "public interest organization" means a nonprofit organization that is organized and operating, in whole or in part, for the purpose of promoting interests or rights of consumers.

(b) The purposes of this chapter are to:

(1) assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices;

(2) promote, through effective enforcement, fair business practices throughout the community; and

(3) educate consumers to demand high standards and seek proper redress of grievances.

(c) This chapter shall be construed and applied liberally to promote its purpose. This chapter establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.

(July 22, 1976, D.C. Law 1-76, § 2, 23 DCR 1185; enacted, Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 8, 1991, D.C. Law 8-234, § 2(b), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(b), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 27(u), 44 DCR 1271; Oct. 19, 2000, D.C. Law 13-172, § 1402(b), 47 DCR 6308; Oct. 20, 2005, D.C. Law 16-33, § 2032(b), 52 DCR 7503; June 12, 2007, D.C. Law 17-4, § 2(a), 54 DCR 4085; Apr. 23, 2013, D.C. Law 19-282, § 2(b)(1), 60 DCR 2132.)

Section references. — This section is referred to in § 1-350.10, § 28-3301, and § 28-3905.

Effect of amendments.

The 2013 amendment by D.C. Law 19-282 rewrote (a)(2); added (a)(14) and (a)(15); and added the last sentence in (c).

Legislative history of Law 19-282. — Law 19-282, the “Consumer Protection Amendment

Act of 2012,” was introduced in Council and assigned Bill No. 19-581. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25, 2013, it was assigned Act No. 19-647 and transmitted to Congress for its review. D.C. Law 19-282 became effective on April 23, 2013.

§ 28-3904. Unlawful trade practices.

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

(a) represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

(b) represent that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have;

(c) represent that goods are original or new if in fact they are deteriorated, altered, reconditioned, reclaimed, or second hand, or have been used;

(d) represent that goods or services are of particular standard, quality, grade, style, or model, if in fact they are of another;

(e) misrepresent as to a material fact which has a tendency to mislead;

(e-1) [r]epresent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(f) fail to state a material fact if such failure tends to mislead;

(f-1) [u]se innuendo or ambiguity as to a material fact, which has a tendency to mislead;

(g) disparage the goods, services, or business of another by false or misleading representations of material facts;

(h) advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered;

(i) advertise or offer goods or services without supplying reasonably expected public demand, unless the advertisement or offer discloses a limita-

tion of quantity or other qualifying condition which has no tendency to mislead;

(j) make false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or the price in comparison to price of competitors or one's own price at a past or future time;

(k) falsely state that services, replacements, or repairs are needed;

(l) falsely state the reasons for offering or supplying goods or services at sale or discount prices;

(m) harass, or threaten a consumer with any act other than legal process, either by telephone, cards, or letters;

(n) cease work on, or return after ceasing work on, an electrical or mechanical apparatus, appliance, chattel or other goods, or merchandise, in other than the condition contracted for, or to impose a separate charge to reassemble or restore such an object to such a condition without notification of such charge prior to beginning work on or receiving such object;

(o) replace parts or components in an electrical or mechanical apparatus, appliance, chattel or other goods, or merchandise when such parts or components are not defective, unless requested by the consumer;

(p) falsely state or represent that repairs, alterations, modifications, or servicing have been made and receiving remuneration therefor when they have not been made;

(q) fail to supply to a consumer a copy of a sales or service contract, lease, promissory note, trust agreement, or other evidence of indebtedness which the consumer may execute;

(r) make or enforce unconscionable terms or provisions of sales or leases; in applying this subsection, consideration shall be given to the following, and other factors:

(1) knowledge by the person at the time credit sales are consummated that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) knowledge by the person at the time of the sale or lease of the inability of the consumer to receive substantial benefits from the property or services sold or leased;

(3) gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in transactions by like buyers or lessees;

(4) that the person contracted for or received separate charges for insurance with respect to credit sales with the effect of making the sales, considered as a whole, unconscionable; and

(5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors;

(s) pass off goods or services as those of another;

(t) use deceptive representations or designations of geographic origin in connection with goods or services;

(u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not;

(v) misrepresent the authority of a salesman, representative or agent to negotiate the final terms of a transaction;

(w) offer for sale or distribute any consumer product which is not in conformity with an applicable consumer product safety standard or has been ruled a banned hazardous product under the federal Consumer Product Safety Act (15 U.S.C. § 2051-83), without holding a certificate issued in accordance with section 14(a) of that Act to the effect that such consumer product conforms to all applicable consumer product safety rules (unless the certificate holder knows that such consumer product does not conform), or without relying in good faith on the representation of the manufacturer or a distributor of such product that the product is not subject to a consumer product safety rule issued under that Act;

(x) sell consumer goods in a condition or manner not consistent with that warranted by operation of sections 28:2-312 through 318 of the District of Columbia Official Code, or by operation or requirement of federal law;

(y) violate any provision of the District of Columbia Consumer LayAway Plan Act (section 28-3818);

(z) violate any provision of the Rental Housing Locator Consumer Protection Act of 1979 (section 28-3819) or, if a rental housing locator, to refuse or fail to honor any obligation under a rental housing locator contract;

(z-1) violate any provision of Chapter 46 of this title;

(aa) violate any provision of sections 32-404, 32-405, 32-406, and 32-407;

(bb) refuse to provide the repairs, refunds, or replacement motor vehicles or fails to provide the disclosures of defects or damages required by the Automobile Consumer Protection Act of 1984;

(cc) violate any provision of the Real Property Credit Line Deed of Trust Act of 1987;

(dd) violate any provision of title 16 of the District of Columbia Municipal Regulations;

(ee) violate any provision of the Public Insurance Adjuster Act of 2002 [Chapter 16A of Title 31];

(ff) violate any provision of Chapter 33 of this title;

(gg) violate any provision of the Home Equity Protection Act of 2007 [Chapter 24A of Title 42]; or

(hh) fail to make a disclosure as required by § 26-1113(a-1).

(July 22, 1976, D.C. Law 1-76, § 5, 23 DCR 1185; Oct. 4, 1978, D.C. Law 2-115, § 3, 25 DCR 1997; June 21, 1980, D.C. Law 3-71, § 3(a), 27 DCR 1891; enacted, Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 13, 1985, D.C. Law 5-136, § 16, 31 DCR 5727; Mar. 14, 1985, D.C. Law 5-162, § 9(a), 32 DCR 160; Jan. 28, 1988, D.C. Law 7-67, § 5, 34 DCR 7441; Mar. 8, 1991, D.C. Law 8-234, § 2(e), 38 DCR 296; Mar. 8, 1991, D.C. Law 8-236, § 9, 38 DCR 306; Feb. 5, 1994, D.C. Law 10-68, § 27(e), 40 DCR 6311; July 25, 1995, D.C. Law 11-30, § 7(h), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-255, § 27(x), 44 DCR 1271; Mar. 27, 2003, D.C. Law 14-256, § 11(b), 50 DCR 238; Mar. 13, 2004,

D.C. Law 15-105, § 63, 51 DCR 881; Nov. 24, 2007, D.C. Law 17-42, § 3(b), 54 DCR 9988; Jan. 29, 2008, D.C. Law 17-87, § 7, 54 DCR 11913; Jan. 29, 2008, D.C. Law 17-90, § 3, 54 DCR 11925; Mar. 25, 2009, D.C. Law 17-353, § 222, 56 DCR 1117; Apr. 23, 2013, D.C. Law 19-282, § 2(b)(2), 60 DCR 2132.)

Section references. — This section is referenced in § 16-4431, § 28-3905, § 28-3909, § 28-4006, and § 38-1312.

Legislative history of Law 19-282. — See note to § 28-3901.

Effect of amendments.

The 2013 amendment by D.C. Law 19-282 added (e-1) and (f-1).

CASE NOTES

Standing.

Court dismissed customers' suit alleging a bank violated the District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code § 28-3901 et seq., by transferring their calls and providing their personal and financial information to foreign call centers without their

consent; the customers lacked standing to bring claims under the CPPA because they did not sufficiently allege an actual or imminent injury that was neither conjectural nor hypothetical. *Floyd v. Bank of Am. Corp.*, — WLR —, 2012 D.C. Super. LEXIS 8 (Apr. 26, 2012).

§ 28-3905. Complaint procedures.

(a) A case is begun by filing with the Department a complaint plainly describing a trade practice and stating the complainant's (and, if different, the consumer's) name and address, the name and address (if known) of the respondent, and such other information as the Director may require. The complaint must be in or reduced by the Director to writing. The filing of a complaint with the Department shall toll the periods for limitation of time for bringing an action as set out in section 12-301 until the complaint has been resolved through an administrative order, consent decree, or dismissal in accordance with this section or until an opportunity to arbitrate has been provided in Chapter 5 of Title 50.

(b)(1) Except as provided in paragraph (2) of this subsection, the Director shall investigate each such complaint and determine:

(A) What trade practice actually occurred; and

(B) Whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law of the District of Columbia.

(2) The Director may, in his or her discretion, decline to prosecute certain cases as necessary to manage the Department's caseload and control program costs.

(b-1) In carrying out an investigation and determination pursuant to subsection (b) of this section, the Director shall consult the respondent and such other available sources of information, and make such other efforts, as are appropriate and necessary to carry out such duties.

(c) If at any time the Director finds that the trade practice complained of may, in whole or in part, be a violation of law other than a law of the District of Columbia or a law within the jurisdiction of the Department, the Director may in writing so inform the complainant, respondent and officials of the District, the United States, or other jurisdiction, who would properly enforce such law.

(d) The director shall determine that there are, or are not, reasonable grounds to believe that a trade practice, in violation of a law of the District of Columbia within the jurisdiction of the Department, has occurred in any part or all of the case. The Director may find that there are not such reasonable grounds for any of the following reasons:

(1) any violation of law which may have occurred is of a law not of the District of Columbia or not within the jurisdiction of the Department, or occurred more than three years prior to the filing of the complaint;

(2) in case paragraph (1) of this subsection does not apply, no trade practice occurred in violation of any law of the District;

(3) the respondent cannot be identified or located, or would not be subject to the personal jurisdiction of a District of Columbia court;

(4) the complainant, to the Director's knowledge, no longer seeks redress in the case;

(5) the complainant and respondent, to the Director's knowledge, have themselves reached an agreement which settles the case; or

(6) the complainant can no longer be located.

(d-1) The Director may dismiss any part or all of a case to which one or more of the reasons stated in subsection (d) of this section apply. The Director shall inform all parties in writing of the determination, and, if any part or all of the case is dismissed, shall specify which of the reasons in this subsection applies to which part of the case, and such other detail as is necessary to explain the dismissal.

(e) The Director may attempt to settle, in accordance with subsection (h) of this section, each case for which reasonable grounds are found in accordance with subsection (d-1) of this section. After the Director's determination as to whether the complaint is within the Department's jurisdiction, in accordance with subsection (d-1) of this section, the Director shall:

(1) effect a consent decree;

(2) dismiss the case in accordance with subsection (h)(2) of this section;

(3) through the Chief of the Office of Compliance present to the Office of Adjudication, with copies to all parties, a brief and plain statement of each trade practice that occurred in violation of District law, the law the trade practice violates, and the relief sought from the Office of Adjudication for violation; or

(4) notify all parties of another action taken, with the reasons therefor stated in detail and supported by fact. Reasons may include:

(A) any reason listed in subsections (d)(1) through (d)(6) of this section; and

(B) that the presentation of a charge to the Office of Adjudication would not serve the purposes of this chapter.

(5) Repealed.

(f) When the case is transmitted to the Office of Adjudication, the Chief of the Office of Compliance shall sign, and serve the respondent, the Department's summons to answer or appear before the Office of Adjudication. Not less than 15 nor more than 90 days after such transmittal, the case shall be heard. The case shall proceed under section 10 of the District of Columbia Adminis-

trative Procedure Act (section 2-509). The Office of Adjudication may, without delaying its hearing or decision, attempt to settle the case pursuant to subsection (h) of this section, and has discretion to permit any stipulation or consent decree the parties agree to. The Director shall be a party on behalf of the complainant. Applications to intervene shall be decided as may be proper or required by law or rule. Reasonable discovery shall be freely allowed. Any finding or decision may be modified or set aside, in whole or part, before a notice of appeal is filed in the case, or the time to so file has run out.

(g) If, after hearing the evidence, the Office of Adjudication decides a trade practice occurred in which the respondent violated a law of the District of Columbia within the jurisdiction of the Department, such Office of Adjudication shall issue an order which:

(1) shall require the respondent to cease and desist from such conduct;
 (2) shall, if such Office of Adjudication also decides that the consumer has been injured by the trade practice, order redress through contract damages, restitution for money, time, property or other value received from the consumer by the respondent, or through rescission, reformation, repair, replacement, or other just method;

(3) shall state the number of trade practices the respondent performed in violation of law;

(4) shall, absent good cause found by the Office of Adjudication, require the respondent to pay the Department its costs for investigation, negotiation, and hearing;

(5) may include such other findings, stipulations, conditions, directives, and remedies including punitive damages, treble damages, or reasonable attorney's fees, as are reasonable and necessary to identify, correct, or prevent the conduct which violated District law; and

(6) may be based, in whole or part, upon a violation of a law establishing or regulating a type of business, occupational or professional license or permit, and may refer the case for further proceedings to an appropriate board or commission, but may not suspend or revoke a license or permit if there is a board or commission which oversees the specific type of license or permit.

(h)(1) At any time after reasonable grounds are found in accordance with subsection (d) of this section, the respondent, the Department (represented by (i) the Director prior to transmittal to the Office of Adjudication and after an order issued pursuant to subsection (f) of this section has been appealed, and (ii) the Office of Adjudication after transmittal to the Office of Adjudication and prior to such appeal), and the complainant, may agree to settle all or part of the case by a written consent decree which may:

(A) include any provision described in subsection (g)(2) through (6) of this section;

(B) not contain an assertion that the respondent has violated a law;

(C) contain an assurance that the respondent will refrain from a trade practice;

(D) bar the Department from further action in the case, or a part thereof; or

(E) contain such other provisions or considerations as the parties agree to.

(2) The representative of the Department shall administer the settlement proceedings, and may utilize the good offices of the Advisory Committee on Consumer Protection. All settlement proceedings shall be informal and include all interested parties and such representatives as the parties may choose to represent them. Such proceedings shall be private, and nothing said or done, except a consent decree, shall be made public by the Department, any party, or the Advisory Committee, unless the parties agree thereto in writing. The representative of the Department may call settlement conferences. For persistent and unreasonable failure by the complainant to attend such conferences or to take part in other settlement proceedings, the Director, prior to transmittal to the Office of Adjudication, may dismiss the case.

(3) A consent decree described in paragraph (1) of this subsection may be modified by agreement of the Department, complainant and respondent.

(i)(1) An aggrieved party may appeal to the District of Columbia Court of Appeals after:

(A) the Office of Adjudication decides a case pursuant to subsection (f) of this section;

(B) all parts of a case have been dismissed by operation of subsection (d) or (e) of this section; or

(C) the Director dismisses an entire case in accordance with subsection (h)(2) of this section.

(1A) Such appeals shall be conducted in accordance with the procedures and standards of section 11 of the District of Columbia Administrative Procedure Act (section 2-510), and take into account the procedural duties placed upon the Department in this section and all actions taken by the Department in the case.

(2) An aggrieved party may appeal any ruling of the Office of Adjudication under subsection (j) of this section to the Superior Court of the District of Columbia.

(3)(A) Any person found to have executed a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department:

(i) shall be liable to the Department for a civil penalty of not exceeding \$1000.00 for each violation enumerated in an order pursuant to subsection (g)(3) of this section; and

(ii) may be assessed and made liable to the Department for a civil penalty of not exceeding \$1000.00 for each violation or failure to adhere to a provision, of an order described in subsection (f), (g), or (j) of this section or a consent decree described in subsection (h) of this section.

(B) The Department, the complainant, or the respondent may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty, when any violation, or failure to adhere to a provision of a consent decree described in subsection (h) of this section, or an order described in subsection (f), (g), or (j) of this section, has occurred. The Department shall sue in that Court for assessment of a civil penalty when an order described in subsection (g) of this section has been issued and become final. A failure by the Department or any person to file suit or prosecute under this subparagraph in regard to any provision or violation of

a provision of any consent decree or order, shall not constitute a waiver of such provision or any right under such provision. The Court shall levy the appropriate civil penalties, and may order, if supported by evidence, temporary, preliminary, or permanent injunctions, damages, treble damages, reasonable attorney's fees, consumer redress, or other remedy. The Court may set aside the final order if the Court determines that the Department of Consumer and Regulatory Affairs lacked jurisdiction over the respondent or that the complaint was frivolous. If, after considering an application to set aside an order of the Department of Consumer and Regulatory Affairs, the Court determines that the application was frivolous or that the Department of Consumer and Regulatory Affairs lacked jurisdiction, the Court shall award reasonable attorney's fees.

(C) Application to the Court to enforce an order shall be made at no cost to the District of Columbia or the complainant.

(4) The Corporation Counsel shall represent the Department in all proceedings described in this subsection.

(j) If, at any time before notice of appeal from a decision made according to subsection (f) of this section is filed or the time to so file has run out, the Director believes that legal action is necessary to preserve the subject matter of the case, to prevent further injury to any party, or to enable the Department ultimately to order a full and fair remedy in the case, the Chief of the Office of Compliance shall present the matter to the Office of Adjudication, which may issue a cease and desist order to take effect immediately, or grant such other relief as will assure a just adjudication of the case, in accordance with such beliefs of the Director which are substantiated by evidence. The Office of Adjudication's ruling may be appealed to court within 7 days of notice thereof on the Director, respondent, and complainant.

(k)(1)(A) A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.

(B) An individual may, on behalf of that individual, or on behalf of both the individual and the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

(C) A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

(D)(i) Subject to sub-subparagraph (ii) of this subparagraph, a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

(ii) An action brought under sub-subparagraph (i) of this subparagraph shall be dismissed if the court determines that the public interest organization does not have sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.

(2) Any claim under this chapter shall be brought in the Superior Court of the District of Columbia and may recover or obtain the following remedies:

(A) Treble damages, or \$1,500 per violation, whichever is greater, payable to the consumer;

(B) Reasonable attorney's fees;

(C) Punitive damages;

(D) An injunction against the use of the unlawful trade practice;

(E) In representative actions, additional relief as may be necessary to restore to the consumer money or property, real or personal, which may have been acquired by means of the unlawful trade practice; or

(F) Any other relief which the court determines proper.

(3) Any written decision made pursuant to subsection (f) of this section is admissible as prima facie evidence of the facts stated therein.

(4) If a merchant files in any court a suit seeking to collect a debt arising out of a trade practice from which has also arisen a complaint filed with the Department by the defendant in the suit either before or after the suit was filed, the court shall dismiss the suit without prejudice, or remand it to the Department.

(5) An action brought by a person under this subsection against a nonprofit organization shall not be based on membership in such organization, membership services, training or credentialing activities, sale of publications of the nonprofit organization, medical or legal malpractice, or any other transaction, interaction, or dispute not arising from the purchase or sale of consumer goods or services in the ordinary course of business.

(1) The Director and Office of Adjudication may use any power granted to the Department in section 28-3903, as each reasonably deems will aid in carrying out the functions assigned to each in this section. Each, while holding the primary responsibility of the Department for decision in a certain case, may join such case with others then before the Department. No case may be disposed of in a manner not expressly authorized in this section. Every complaint case filed with the Department and within its jurisdiction shall be decided in accordance with the procedures and sanctions of this section, notwithstanding that a given trade practice, at issue in the case, may be governed in whole or in part by another law which has different enforcement procedures and sanctions.

(m)(1) Whenever requested, the Department will make available to the complainant and respondent an explanation, and any other information helpful in understanding, the provisions of any consent decree to which the Department agrees, and any order or decision which the Department makes.

(2) The Director shall maintain a public index for all the cases on which the Department has made a final action or a consent decree, organized by:

(A) name of complainant;

(B) name of respondent;

(C) industry of the merchant involved;

(D) nature of the violation of District law alleged or found to exist (for example, subsection of section 28-3904 involved, or section of a licensing law involved);

(E) final disposition.

(n) There shall be established a Consumer Protection Education Fund ("Fund"). All monies awarded to or paid to the Department by operation of this section, including final judgements, consent decrees, or settlements reduced to final judgements, shall be paid into the Fund in order to further the purpose of this chapter as enumerated in § 28-3901.

(o) Every complaint case that is before the Department in accordance with this section shall proceed in confidence, except for hearings and meetings before the Office of Adjudication, until the Department makes a final action or a consent decree.

(p) The Director may file a complaint in accordance with subsection (a) of this section, on behalf of one or more consumers or as complainant, based on evidence and information gathered by the Department in carrying out this chapter. Persons not parties to but directly or indirectly intended as beneficiaries of an order described in subsection (f), (g), or (j) of this section, or a consent decree described in subsection (h) of this section, arising out of a complaint filed by the Director, may enforce such order or decree in the manner provided in subsection (i)(3)(B) of this section.

(q) At any hearing pursuant to subsection (f) or (j) of this section, a witness has the right to be advised by counsel present at such hearing. In any process under this section, the complainant and respondent may have legal or other counsel for representation and advice.

(r) All cases for which complaints were filed before March 5, 1981, may be presented to and heard by the Office of Adjudication notwithstanding the time limits previously provided in section 28-3905(d), 28-3905(e), and 28-3905(f) for the investigation and transmittal of cases to the Office of Adjudication, and for the hearing of cases by the Office of Adjudication.

(July 22, 1976, D.C. Law 1-76, § 6, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(b), 24 DCR 726; enacted, Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 5, 1981, D.C. Law 3-159, §§ 2(b), (c), 3, 27 DCR 5147; Mar. 8, 1991, D.C. Law 8-234, § 2(f), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(f), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 27(y), 44 DCR 1271; Apr. 29, 1998, D.C. Law 12-86, § 1301(c), 45 DCR 1172; Oct. 19, 2000, D.C. Law 13-172, § 1402(d), 47 DCR 6308; Oct. 20, 2005, D.C. Law 16-33, § 2032(d), 52 DCR 7503; June 12, 2007, D.C. Law 17-4, § 2(b), 54 DCR 4085; Apr. 23, 2013, D.C. Law 19-282, § 2(b)(3), 60 DCR 2132.)

Section references. — This section is referenced in § 28-3818, § 28-3901, § 28-3902, § 28-3903, § 28-3906, and § 28-4002.

Effect of amendments.

The 2013 amendment by D.C. Law 19-282 rewrote (k)(1) and (k)(2).

Legislative history of Law 19-282. — See note to § 28-3901.

CHAPTER 45. RESTRAINTS OF TRADE.

Sec.

28-4505. Civil investigative demand.

28-4506. Criminal enforcement by the District
of Columbia.

§ 28-4505. Civil investigative demand.

(a) Whenever the Corporation Counsel has reason to believe that any person may be in possession, custody, or control of any documentary material, or may have any information, relevant to a civil antitrust investigation, the Corporation Counsel may, prior to the institution of a proceeding thereon, issue in writing, and cause to be served upon such person, a civil investigative demand requiring such person to produce such documentary material for inspection and copying or reproduction, to answer written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers, or testimony.

(b) Each such demand shall:

(1) state the nature of:

(A) the conduct under investigation constituting the alleged antitrust violation; or

(B) the activities under investigation which, if consummated, may result in an antitrust violation; and

(C) the applicable provision of law;

(2) if it is a demand for production of documentary material:

(A) describe the class or classes of documentary material to be produced with sufficient definiteness as to permit such material to be fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time for the material demanded to be assembled and made available for inspection and copying or reproduction; and

(C) identify the custodian to whom such material shall be made available;

(3) if it is a demand for answers to written interrogatories:

(A) propound with definiteness the written interrogatories to be answered;

(B) prescribe a date or dates at which time answers to written interrogatories shall be submitted; and

(C) identify the custodian to whom such answers shall be submitted; or

(4) if it is a demand for the giving of oral testimony:

(A) prescribe a date, time, and place at which oral testimony shall be commenced; and

(B) identify an assistant corporation counsel who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted.

(c) No such demand shall require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony, if such material, answers, or testimony would be protected from disclosure under:

(1) the standards applicable to subpoenas or subpoenas duces tecum issued by the Superior Court of the District of Columbia in aid of a grand jury investigation; or

(2) the standards applicable to discovery requests under the Superior Court of the District of Columbia Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this chapter.

(d) Any such demand shall be served in any manner provided for service of process in the Superior Court of the District of Columbia, or if the person to be served has no place of business within the District of Columbia, the demand may be served by depositing a duly executed copy in the United States mails by registered mail, return receipt requested, addressed to such person at that person's principal office or place of business.

(e) The production of documentary material in response to a demand served pursuant to this section shall be made under a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production, to the effect that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the custodian.

(f) Each interrogatory in a demand served pursuant to this section shall be answered separately and fully in writing under oath, unless such procedure is objected to, in which event the reasons for the objection shall be stated with specificity in lieu of an answer, and such reasons shall be submitted under a sworn certificate.

(g)(1) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the District of Columbia. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be recorded and transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian.

(2) The assistant corporation counsel conducting the examination shall exclude from the place where the examination is held all other persons: except, the person being examined, the person's counsel, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the District of Columbia, or in such other place as may be agreed upon by the assistant corporation counsel conducting the examination and such person.

(4) When the testimony is fully transcribed, the assistant corporation counsel or the officer shall afford the witness (who may be accompanied by counsel) a reasonable opportunity to examine the transcript; and the transcript shall be read to or by the witness, unless such examination and reading

are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the assistant corporation counsel with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days of the witness being afforded a reasonable opportunity to examine the transcript, the officer or the assistant corporation counsel shall sign the transcript and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reason, if any, given therefor.

(5) The officer shall certify on the transcript that the witness was duly sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or assistant corporation counsel shall promptly deliver or send the transcript by registered mail, return receipt requested, addressed to the custodian.

(6) Upon request, the assistant corporation counsel shall furnish a copy of the transcript at no cost to the witness only: except, that the Corporation Counsel may for good cause limit such witness to inspection of the official transcript of the witness's testimony.

(7) Any person compelled to appear under a demand for oral testimony pursuant to this section may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when a claim is made that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise object to or refuse to answer any question, and shall not by himself or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, the Corporation Counsel may petition the Superior Court of the District of Columbia pursuant to this section for an order compelling such person to answer such question. If such person refuses to answer any question on the grounds of privilege against self-incrimination, the testimony of such person may be compelled by order of court upon the granting of immunity. No testimony or other disclosure compelled under court order or any information directly or indirectly derived from such ordered testimony or disclosure may be used against the person in any criminal case except a prosecution for perjury or otherwise failing to comply with the order.

(8) Any person appearing for oral examination pursuant to a demand served under this section shall be entitled to the same mileage reimbursements which are paid to witnesses in the Superior Court of the District of Columbia.

(h) Whenever any person fails to comply with any civil investigative demand duly served upon that person under this section or whenever satis-

factory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Corporation Counsel may file, in the Superior Court of the District of Columbia and serve upon such person a petition for an order of such court for the enforcement of this chapter. A person who, with the intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand duly and properly made under this section, withholds, misrepresents, removes from any place, conceals, covers up, destroys, mutilates, alters, or by other means falsifies any documentary material, answers to written interrogatories, or oral testimony which is the subject of such demand, or who attempts to do so or solicits another to do so shall upon conviction thereof be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned not more than one (1) year or both.

(i) Within 20 days after the service of any such civil investigative demand upon any person, or at any time before the return date specified in the demand, whichever period is shorter, or within such period exceeding 20 days after service or in excess of such return date as may be prescribed in writing, subsequent to service, by any antitrust investigator named in the demand, such person may file in the Superior Court of the District of Columbia and serve upon the Corporation Counsel a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court, except that such person shall comply with any portion of the demand not sought to be modified or set aside. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of such person.

(j) At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories delivered, or transcripts of oral testimony given by any person in compliance with any such demand, such person may file, in the Superior Court of the District of Columbia, and serve upon such custodian a petition for an order of such court requiring the performance by such custodian of any duty imposed upon the custodian by this section.

(k) Any procedure, other than an action to enforce a demand pursuant to subsection (h) of this section, or testimony taken or material produced under this section or voluntarily in the course of an investigation shall be exempt from the provisions of the District of Columbia Freedom of Information Act (section 2-531 et seq.) and shall be kept confidential by the Corporation Counsel before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person who has testified, answered interrogatories, or produced material: except, that testimony taken or material or information produced under this section may be disclosed by the Corporation Counsel to any officer or employee of any federal or state law enforcement agency upon the prior certification of an officer of any such federal or state law enforcement agency that such testimony, material, or information will be maintained in confidence and will be used only for official law enforcement purposes.

(l) Unless otherwise authorized or required by law, any employee of the District of Columbia who shall intentionally disclose information kept confidential by subsection (k) of this section shall be guilty of a misdemeanor punishable by a fine up to \$500.

(Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368; Apr. 9, 1997, D.C. Law 11-255, § 27(dd), 44 DCR 1271; June 11, 2013, D.C. Law 19-317, § 285(d), 60 DCR 2064.)

Section references. — This section is referenced in § 2-534 and § 28-4513.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (h).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 28-4506. Criminal enforcement by the District of Columbia.

Every person who violates section 28-4502 or 28-4503 shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01], or by imprisonment not exceeding one (1) year, or both. The Corporation Counsel shall commence and try all prosecutions for violations of section 28-4502 or 28-4503. Whenever a corporation violates section 28-4502 or 28-4503, the individual directors, officers, or agents of such corporation who have intentionally authorized, ordered or ratified the acts constituting such violation shall be punishable in accordance with this section.

(Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368; June 11, 2013, D.C. Law 19-317, § 285(e), 60 DCR 2064.)

Section references. — This section is referenced in § 28-4510 and § 28-4511.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$50,000”.

Legislative history of Law 19-317. — See note to § 28-4505.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 46. CONSUMER CREDIT SERVICE ORGANIZATIONS.

Sec.
28-4607. Penalties.

§ 28-4607. Penalties.

(a) Any person who violates any provision of this chapter shall be fined not more than the amount set forth in [§ 22-3571.01] per violation, imprisoned for not more than 1 year, or both.

(b) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this act [this chapter] or the rules authorized by this chapter, pursuant to subchapters I and II of Chapter 18 of Title 2.

(c) Any consumer injured by a violation of this chapter may bring an action for recovery of damages within 3 years after the signing of the contract. Judgment shall be entered for actual damages and shall in no case be less than the amount paid by the consumer to the consumer credit service organization, plus reasonable attorney's fees and actual costs incurred to recover the damages. An award may also be entered for punitive damages.

(d) The remedies provided pursuant to this chapter are in addition to the remedies available pursuant to any other law.

(Mar. 8, 1991, D.C. Law 8-236, § 8, 38 DCR 306; June 11, 2013, D.C. Law 19-317, § 285(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 49. UNIFORM ELECTRONIC TRANSACTIONS.

Sec.

28-4903. Prospective application.

§ 28-4903. Prospective application.

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after [October 3, 2001].

(Oct. 3, 2001, D.C. Law 14-28, § 3502(b), 48 DCR 6981; Mar. 13, 2004, D.C. Law 15-105, § 64, 51 DCR 881.)

CHAPTER 52. UNIT PRICING REQUIREMENTS.

Sec.

28-5201. Short title.

28-5202. Definitions.

Sec.

28-5203. Application.

28-5204. Terms for unit pricing.

Sec.
 28-5205. Exemptions.
 28-5206. Pricing.
 28-5207. Presentation of price.

Sec.
 28-5208. Uniformity.
 28-5209. Civil penalties.
 28-5210. Rules.

§ 28-5201. Short title.

This chapter may be cited as the “Unit Pricing Requirement Act of 2012”.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — Law 19-282, the “Consumer Protection Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-581. The Bill was adopted on first and second readings on Dec. 4, 2012 and

Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25, 2013, it was assigned Act No. 19-647 and transmitted to Congress for its review. D.C. Law 19-282 became effective on April 23, 2013.

§ 28-5202. Definitions.

For the purposes of this chapter, the term:

(1) “Combination packages” shall mean a package intended for retail sale, containing 2 or more individual packages or units of dissimilar commodities.

(2) “Commodity” shall mean any food, drug, cosmetic, or other article, product, or commodity of any kind or class that is:

(A) Customarily produced for sale at retail for consumption by individuals for purposes of personal care or in the performance of services ordinarily performed in or around the household; and

(B) Usually consumed or expended in the course of that use or performance other than by wear or deterioration from use.

(3) “Person” shall mean both plural and the singular and includes individuals, partnerships, corporations, companies, societies, and associations.

(4) “Unit price” or “unit pricing” shall mean the retail price of an item expressed in dollars and cents per unit.

(5) “Variety packages” shall mean a package intended for retail sale, containing 2 or more individual packages or units of similar, but not identical, commodities. Commodities that are generically the same, but that differ in weight, measure, volume, appearance, or quality, are considered similar but not identical.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5203. Application.

Except for random and uniform weight packages that clearly state the unit, each person who sells, offers, or displays for sale a consumer commodity at retail shall provide the unit price information in the manner prescribed in this chapter.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5204. Terms for unit pricing.

The declaration of the unit price of a particular commodity in all package sizes offered for sale in a retail establishment shall be uniformly and consistently expressed in terms of:

(1) Price per kilogram or 100 grams, or price per pound or ounce, if the net quantity of contents of the commodity is in terms of weight;

(2) Price per liter or 100 milliliters, or price per dry quart or dry pint, if the net quantity of contents of the commodity is in terms of dry measure or volume;

(3) Price per liter or 100 milliliters, or price per gallon, quart, pint, or fluid ounce, if the net quantity of contents of the commodity is in terms of liquid volume;

(4) Price per individual unit or multiple units if the net quantity of contents of the commodity is in terms of count; or

(5) Price per square meter, square decimeter, or square centimeter, or price per square yard, square foot, or square inch, if the net quantity of contents of the commodity is in terms of area.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5205. Exemptions.

This chapter does not apply to:

(1) Prepackaged food that contains separately identifiable items that are separated by physical division within the package;

(2) Any item sold only by prescription;

(3) Any item subject to the packaging or labeling requirements of the federal Bureau of Alcohol, Tobacco and Firearms or to any pricing requirements under federal law;

(4) Any item actually being sold through a vending machine;

(5) Any item delivered directly to a retail sales agency without passing through warehousing or other inventory facility used by the agency;

(6) Commodities packaged in quantities of less than 28 grams (one ounce) or 29 milliliters (one fluid ounce) or when the total retail price is 50 cents or less;

(7) When only one brand of a particular commodity in only one size is offered for sale in a particular retail establishment;

(8) Variety packages;

(9) Combination packages; or

(10) A person with less than \$30 million in gross volume of sales of consumer commodities and to whom at least one of the following applies:

(A) During the preceding calendar year, sold a gross volume of consumer commodities of less than \$750,000;

(B) Is not part of a company which consists of 10 or more sales agencies in or out of the District of Columbia;

(C) Derives less than 15% of its total revenues from consumer commodities subject to this chapter; or

(D) Is owned and operated by not more than one individual and the members of the person's immediate family.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5206. Pricing.

(a) The unit price shall be to the nearest cent when a dollar or more. If the unit price is under a dollar, it shall be listed:

- (1) To the tenth of a cent; or
- (2) To the whole cent.

(b) The retail establishment shall have the option of listing the unit price as outlined in subsection (a)(1) or (2) of this section, but shall not use both methods of listing the unit price.

(c) The retail establishment shall accurately and consistently use the same method of rounding up or down to compute the price to the whole cent.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Section references. — This section is referenced in § 28-5207.

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5207. Presentation of price.

(a) In any retail establishment in which the unit price information is provided in accordance with the provisions of this chapter, that information may be displayed by means of a sign that offers the unit price for one or more brands or sizes of a given commodity by means of a sticker, stamp, sign, label, or tag affixed to the shelf upon which the commodity is displayed, or by means of a sticker, stamp, sign, label, or tag affixed to the consumer commodity.

(b) Where a sign providing unit price information for one or more sizes or brands of a given commodity is used, that sign shall be displayed clearly and in a non-deceptive manner in a central location as close as practical to all items to which the sign refers.

(c) If a single sign or tag includes the unit price information for more than one brand or size of a given commodity, the following information shall be provided:

- (1) The identity and the brand name of the commodity.
- (2) The quantity of the packaged commodity; provided, that more than one package size per brand is displayed.
- (3) The total retail sales price.
- (4) The price per appropriate unit, in accordance with § 28-5206.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5208. Uniformity.

(a) If different brands or package sizes of the same consumer commodity are expressed in more than one unit of measure, the retail establishment shall unit price the items consistently.

(b) When metric units appear on the consumer commodity in addition to other units of measure, the retail establishment may include both units of measure on any stamps, tags, labels, signs, or lists.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5209. Civil penalties.

Any person who violates any provision of this chapter, or any regulation promulgated pursuant to this chapter, may be assessed a civil penalty not to exceed \$500 for each violation.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

§ 28-5210. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter.

(Apr. 23, 2013, D.C. Law 19-282, § 2(c), 60 DCR 2132.)

Legislative history of Law 19-282. — See note to § 28-5201.

TITLE 29. BUSINESS ORGANIZATIONS.

Chapter

1. General Provisions.

13. Benefit Corporations.

CHAPTER 1. GENERAL PROVISIONS.

Subchapter II. Filing

ation Fund; disposition of entity filing fees.

Sec.

29-102.12. Fees.

29-102.13. Establishment of Corporate Recor-

*Subchapter I. General Provisions.***§ 29-101.06. Civil fines for violations of title.****CASE NOTES****Lease.**

Trial court erred in awarding a landlord attorney's fees under former D.C. Code § 29-101.139, concerning the unauthorized assumption of corporate powers. The landlord's own argument that the lease was void ab initio

judicially and equitably estopped it from enforcing a provision of the lease and from asserting the inconsistent position that there was liability for obligations arising under the lease. *Brown v. M Street Five, LLC*, 56 A.3d 765, 2012 D.C. App. LEXIS 618 (2012).

*Subchapter II. Filing.***§ 29-102.12. Fees.**

(a) The Mayor, pursuant to Chapter 5 of Title 2, shall adopt rules, to establish or revise fees for entity filings authorized to be delivered to the Mayor for filing under this title and for copying and certifying a copy of any entity filing under this title.

(b) There shall be no fee for filing a registered agent's statement of resignation.

(c) The withdrawal under § 29-102.04 of a filed record before it is effective or the correction of a filed record under § 29-102.05 shall not entitle the person on whose behalf the record was filed to a refund of the filing fee.

(d) The rules proposed pursuant to subsection (a) of this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; May 1, 2013, D.C. Law 19-305, § 2(d), 60 DCR 2735.)

Section references. — This section is referenced in § 29-102.13.

Effect of amendments. — The 2013 amendment by D.C. Law 19-305 substituted "deemed approved" for "deemed disapproved" in (d).

Legislative history of Law 19-305. — Law 19-305, the "Benefit Corporation Act of 2012,"

was introduced in Council and assigned Bill No. 19-584. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 11, 2013, it was assigned Act No. 19-672 and transmitted to Congress for its review. D.C. Law 19-305 became effective on May 1, 2013.

§ 29-102.13. Establishment of Corporate Recordation Fund; disposition of entity filing fees.

(a) There is established the Corporate Recordation Fund ("Fund"), which shall be classified as a proprietary fund and a type of enterprise fund for the purposes of § 47-373(1). The Fund shall be credited with all fees:

(1) That are identified in § 29-102.12 that are collected for Chapters 10, 12, and 13;

(2) That are identified as expedited fees and the fees collected for the enforcement of Chapters 10, 12, and 13; and

(3) Collected for the processing of corporate filings, including renewals, fines, and option service fees.

(b) Revenue credited to the Fund shall be expended by the Department of Consumer and Regulatory Affairs as designated by an appropriations act of Congress for the purposes of maintaining and upgrading the corporate filing system, including copying fees, automation upgrades, personnel costs, and supplies.

(c) Fees and charges payable to the Mayor shall be paid at the time of presenting a document for filing or making a request for information for which a fee or charge is payable.

(d) Overpayments and duplicate and erroneous payments shall be refunded. A mere change of purpose after the payment of money, as when a party desires to withdraw a filing, shall not entitle a party to a refund.

(e) Except noted under subsection (d) of this section, all other fees shall be deemed processing fees and shall be nonrefundable.

(f) The Mayor may cancel a processed filing due to nonpayment.

(July 2, 2011, D.C. Law 18-378, § 2, 58 DCR 1720; May 1, 2013, D.C. Law 19-305, § 2(c), 60 DCR 2735.)

Section references. — This section is referenced in § 47-2855.05.

Effect of amendments. — The 2013 amendment by D.C. Law 19-305 substituted

“10, 12, and 13” for “10 and 12” in (a)(1) and (a)(2).

Legislative history of Law 19-305. — See note to § 29-102.12.

CHAPTER 13. BENEFIT CORPORATIONS.

Subchapter I. Preliminary Provisions

Sec.

- 29-1301.01. Short title.
- 29-1301.02. Definitions.
- 29-1301.03. Applicability; construction.
- 29-1301.04. Formation of benefit corporations.
- 29-1301.05. Election of status.
- 29-1301.06. Termination of status.

Subchapter II. Corporate Purposes

- 29-1302.01. Corporate purposes.

Subchapter III. Accountability

Sec.

- 29-1303.01. Standard of conduct for directors.
- 29-1303.02. Benefit director.
- 29-1303.03. Standard of conduct for officers.
- 29-1303.04. Benefit officer.
- 29-1303.05. Right of action.

Subchapter IV. Transparency

- 29-1304.01. Annual benefit report.

Subchapter I. Preliminary Provisions.

§ 29-1301.01. Short title.

This chapter may be cited as the “Benefit Corporation Act of 2012”.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — Law 19-305, the “Benefit Corporation Act of 2012,” was introduced in Council and assigned Bill No. 19-584. The Bill was adopted on first and

second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 11, 2013, it was assigned

Act No. 19-672 and transmitted to Congress for its review. D.C. Law 19-305 became effective on May 1, 2013.

§ 29-1301.02. Definitions.

(a) For the purposes of this chapter, the term:

(1) "Benefit corporation" means a business corporation:

(A) That has elected to become subject to this chapter; and

(B) The status of which as a benefit corporation has not been terminated under § 29-1301.06.

(2) "Benefit director" means either:

(A) The director designated as the benefit director of a benefit corporation under § 29-1303.02; or

(B) A person with one or more of the powers, duties, or rights of a benefit director to the extent provided in the bylaws under § 29-1303.02.

(3) "Benefit enforcement proceeding" means any claim or action for:

(A) Failure of a benefit corporation to pursue or create general public benefit or a specific public benefit purpose set forth in its articles of incorporation; or

(B) A violation of any obligation, duty, or standard of conduct under this chapter.

(4) "Benefit officer" means the individual designated as the benefit officer of a benefit corporation under § 29-1303.04.

(5) "General public benefit" means the material positive impact that the business and operations of a benefit corporation has on society and the environment, taken as a whole, assessed against a third-party standard.

(6) "Independent", subject to subsection (b) of this section, means having no material relationship with a benefit corporation or a subsidiary of the benefit corporation. A person who serves as a benefit director or benefit officer is not independent by virtue of such service. A material relationship between a person and a benefit corporation or any of its subsidiaries will be conclusively presumed to exist if any of the following apply:

(A) The person is, or has been within the last 3 years, an employee other than a benefit officer of the benefit corporation or a subsidiary of the benefit corporation.

(B) An immediate family member of the person is, or has been within the last 3 years, an executive officer other than a benefit officer of the benefit corporation or its subsidiary.

(C) There is beneficial or record ownership of 5% or more of the outstanding shares of the benefit corporation by:

(i) The person; or

(ii) An entity of which the person is a director, an officer, or a manager or in which the person owns beneficially or of record 5% or more of the outstanding equity interests.

(7) "Minimum status vote" means:

(A) In the case of a business corporation, in addition to any other required approval or vote, the satisfaction of the following conditions:

(i) The shareholders of every class or series shall be entitled to vote as a separate voting group on the corporate action regardless of a limitation stated in the articles of incorporation or bylaws on the voting rights of any class or series.

(ii) The corporate action must be approved by vote of the shareholders of each voting group entitled to cast at least $\frac{2}{3}$ of the votes that all shareholders of the voting group are entitled to cast on the action.

(B) In the case of an entity other than a business corporation, in addition to any other required approval, vote, or consent, the satisfaction of the following conditions:

(i) The holders of each class or series of equity interest in the entity that are entitled to receive a distribution of any kind from the entity shall be entitled as a separate voting group to vote on or consent to the action regardless of any otherwise applicable limitation on the voting or consent rights of any class or series.

(ii) The action must be approved by vote or consent of each voting group described in sub-subparagraph (i) of this subparagraph entitled to cast at least $\frac{2}{3}$ of the votes or consents that all the members of the group are entitled to cast on the action.

(8) "Specific public benefit" includes:

(A) Providing low-income or underserved individuals or communities with beneficial products or services;

(B) Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business;

(C) Preserving the environment;

(D) Improving human health;

(E) Promoting the arts, sciences, or advancement of knowledge;

(F) Increasing the flow of capital to entities with a public benefit purpose; and

(G) The accomplishment of any other particular benefit on society or the environment.

(9) "Subsidiary" means, subject to subsection (b) of this section, in relation to a person, an entity in which the person owns beneficially or of record 50% or more of the outstanding equity interests.

(10) "Third-party standard" means a recognized standard for defining, reporting, and assessing corporate social and environmental performance that is:

(A) Comprehensive in that it assesses the effect of the business and its operations upon the interests listed in § 29-1303.01(a)(1)(B), (C), (D), and (E);

(B) Developed by an organization that is independent of the benefit corporation and satisfies the following requirements:

(i) Not more than $\frac{1}{3}$ of the members of the governing body of the organization are representatives of any of the following:

(I) An association of businesses operating in a specific industry the performance of whose members is measured by the third-party standard;

(II) Businesses from a specific industry or an association of businesses in that industry; or

(III) Businesses whose performance is assessed against the standard.

(ii) The organization is not materially financed by an association or business described in sub-subparagraph (i) of this subparagraph;

(C) Credible because the standard is developed by a person that both:

(i) Has access to necessary expertise to assess overall corporate social and environmental performance; and

(ii) Uses a balanced multi-stakeholder approach, including a public comment period of at least 30 days to develop the standard; and

(D) Transparent because the following information is publicly available:

(i) About the standard:

(I) The criteria considered when measuring the overall social and environmental performance of a business; and

(II) The relative weightings of those criteria; and

(ii) About the development and revision of the standard:

(I) The identity of the directors, officers, material owners, and the governing body of the organization that developed and controls revisions to the standard;

(II) The process by which revisions to the standard and changes to the membership of the governing body are made; and

(III) An accounting of the sources of financial support for the organization, with sufficient detail to disclose any relationships that could reasonably be considered to present a potential conflict of interest.

(b) For purposes of the definitions of the terms “independent” and “subsidiary” in subsection (a) of this section, a percentage of ownership in an entity shall be calculated as if all outstanding rights to acquire equity interests in the entity have been exercised.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1301.03. Applicability; construction.

(a) This chapter shall be applicable to all benefit corporations.

(b) This chapter shall not affect a statute or rule of law that is applicable to a business corporation that is not a benefit corporation, and shall not in and of itself create an implication that a contrary or different rule is applicable to a business corporation and not a benefit corporation.

(c) Except as otherwise provided in this chapter, Chapters 1, 2, and 3 of this title shall apply to a benefit corporation organized under this chapter. A benefit corporation may simultaneously be subject to this chapter and one or more other chapters of this title.

(d) A provision of the articles of incorporation or bylaws of a benefit corporation may not relax, be inconsistent with, or supersede a provision of this chapter.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1301.04. Formation of benefit corporations.

A benefit corporation must be formed in accordance with Chapter 3 of this title, but its articles of incorporation must also state that it is a benefit corporation.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1301.05. Election of status.

(a) An existing business corporation may become a benefit corporation under this chapter by amending its articles of incorporation so that they contain, in addition to the requirements of § 29-308.01, a statement that the corporation is a benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

(b)(1) This subsection applies if all of the following apply:

(A) An entity that is not a benefit corporation is:

(i) A party to a merger or consolidation; or

(ii) The exchanging entity in a share exchange; and

(B) The surviving, new, or resulting entity in the merger, consolidation, or share exchange is to be a benefit corporation.

(2) To be effective, a plan of merger, consolidation or share exchange subject to this subsection must be adopted by at least the minimum status vote.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1301.06.

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1301.06. Termination of status.

(a) A benefit corporation may terminate its status as a benefit corporation and cease to be subject to this chapter by amending its articles of incorporation and deleting the provision required by § 29-1301.05. To be effective, the amendment must be adopted by at least the minimum status vote.

(b) If a plan would have the effect of terminating the status of a business corporation as a benefit corporation, to be effective, the plan must be adopted by at least the minimum status vote. Any sale, lease, exchange, or other disposition of all or substantially all of the assets of a benefit corporation, unless the transaction is in the usual and regular course of business, shall not be effective unless the transaction is approved by at least the minimum status vote.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1301.02.

Legislative history of Law 19-305. — See note to § 29-1301.01.

Subchapter II. Corporate Purposes.

§ 29-1302.01. Corporate purposes.

(a) A benefit corporation shall have a purpose of creating general public benefit. This purpose is in addition to its purpose under § 29-303.01.

(b) The articles of incorporation of a benefit corporation may identify one or more specific public benefits that it is the purpose of the benefit corporation to create in addition to its purposes under § 29-303.01 and subsection (a) of this section. The identification of a specific public benefit under this subsection does not limit the obligation of a benefit corporation under subsection (a) of this section.

(c) The creation of general public benefit and specific public benefit under subsections (a) and (b) of this section is in the best interests of the benefit corporation.

(d) A benefit corporation may amend its articles of incorporation to add, amend, or delete the identification of a specific public benefit for that benefit corporation. To be effective, the amendment must be adopted by at least the minimum status vote.

(e) A professional corporation that is a benefit corporation does not violate § 29-505 by having its purpose be to create general public benefit or a specific public benefit.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — See note to § 29-1301.01.

Subchapter III. Accountability.

§ 29-1303.01. Standard of conduct for directors.

(a) In discharging the duties of their respective positions and in considering the best interests of the benefit corporation, the board of directors, committees of the board, and individual directors of a benefit corporation:

(1) Shall consider the effects of any action upon:

(A) The shareholders of the benefit corporation;

(B) The employees and work force of the benefit corporation, its subsidiaries, and its suppliers;

(C) The interests of customers as beneficiaries of the general public benefit or specific public benefit purposes of the benefit corporation;

(D) Community and societal factors, including those of each community in which offices or facilities of the benefit corporation, its subsidiaries, or its suppliers are located;

(E) The local and global environment;

(F) The short-term and long-term interests of the benefit corporation, including benefits that may accrue to the benefit corporation from its long-term plans and the possibility that these interests may be best served by the continued independence of the benefit corporation; and

(G) The ability of the benefit corporation to accomplish its general public benefit purpose and any specific public benefit purpose;

(2) May consider other pertinent factors or the interests of any other group that they deem appropriate; and

(3) Need not give priority to the interests of a particular person or group referenced in paragraph (1) or (2) of this subsection over the interests of any other person or group, unless the benefit corporation has stated in its articles of incorporation its intention to give priority to certain interests related to its accomplishment of its general public benefit purpose or of a specific public benefit purpose identified in its articles of incorporation.

(b) The consideration of interests and factors in the manner required by subsection (a) of this section does not constitute a violation of § 29-306.30.

(c) A director is not personally liable for monetary damages for:

(1) Any action taken as a director if the director performed the duties of office in compliance with § 29-306.30 and this section; or

(2) Failure of the benefit corporation to create general public benefit or specific public benefit.

(d) A director does not have a duty to a person that is a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the status of the person as a beneficiary.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1301.02, § 29-1303.02, and § 29-1303.03. **Legislative history of Law 19-305.** — See note to § 29-1301.01.

§ 29-1303.02. Benefit director.

(a) The board of directors of a benefit corporation shall include one director, who:

(1) Shall be designated the benefit director; and

(2) Shall have, in addition to the powers, duties, rights, and immunities of the other directors of the benefit corporation, the powers, duties, rights, and immunities provided in this subchapter.

(b) The benefit director shall be elected, and may be removed, in the manner provided by subchapter VI of Chapter 3 of this title, and shall be an individual who is independent. The benefit director may serve as the benefit officer at the same time as serving as the benefit director. The articles of incorporation or bylaws of a benefit corporation may prescribe additional qualifications of the benefit director not inconsistent with this section.

(c) The benefit director shall prepare, and the benefit corporation shall include in the annual benefit report to shareholders required by § 29-1304.01, the opinion of the benefit director on each of the following:

(1) Whether the benefit corporation acted in accordance with its general public benefit purpose and any specific public benefit purpose in all material respects during the period covered by the report; and

(2) Whether the directors and officers complied with §§ 29-1303.01(a) and 29-1303.03(a), respectively.

(3) If, in the opinion of the benefit director, the benefit corporation or its directors or officers failed to comply with §§ 29-1303.01(a) and 29-1303.03(a), a description of the ways in which the benefit corporation or its directors or officers failed to comply.

(d) The acts of an individual in the capacity of a benefit director shall constitute for all purposes acts of that individual in the capacity of a director of the benefit corporation.

(e)(1) If an agreement among the shareholders of a benefit corporation under § 29-305.42 provides that the powers and duties conferred or imposed upon the board of directors shall be exercised or performed by a person other than the directors, the bylaws of a benefit corporation must provide that the persons or shareholders who perform the duties of the board of directors include a person with the powers, duties, rights, and immunities of a benefit director.

(2) A person that exercises one or more of the powers, duties or rights of a benefit director under this subsection:

(A) Does not need to be independent of the benefit corporation;

(B) Shall have the immunities of a benefit director;

(C) May share the powers, duties, and rights of a benefit director with one or more other persons; and

(D) Shall not be subject to the procedures for election or removal of directors in § 29-306 unless:

(i) The person is also a director of the benefit corporation; or

(ii) The bylaws make those procedures applicable.

(f) Regardless of whether the articles of incorporation of a benefit corporation include a provision eliminating or limiting the personal liability of directors authorized by § 29-302.02(b)(4), a benefit director shall not be personally liable for any action taken, or any failure to take any action, as a director, except liability for:

(1) The amount of a financial benefit received by a director to which the director is not entitled;

(2) An intentional infliction of harm on the corporation or the shareholders;

(3) A violation of § 29-306.32; or

(4) A violation of criminal law.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1301.02 and § 29-1304.01.

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1303.03. Standard of conduct for officers.

(a) Each officer of a benefit corporation shall consider the interests and factors described and in the manner provided in § 29-1303.01(a) if:

(1) The officer has discretion to act with respect to a matter; and

(2) It is reasonably apparent to the officer that the matter may have a material effect on the creation of general public benefit or a specific public benefit identified in the articles of incorporation of the benefit corporation.

(b) The consideration of interests and factors as provided by subsection (a) of this section shall not constitute a violation of § 29-306.42.

(c) An officer is not personally liable for monetary damages for:

(1) Action taken as an officer if the officer performed the duties of the position in compliance with § 29-306.42 and this section; or

(2) Failure of the benefit corporation to pursue or create general public benefit or specific public benefit.

(d) An officer does not have a duty to a beneficiary of the general public benefit purpose or a specific public benefit purpose of a benefit corporation arising from the beneficiary's status.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1303.02.

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1303.04. Benefit officer.

(a) A benefit corporation may designate a benefit officer.

(b) A benefit officer shall have:

(1) The powers and duties relating to the purpose of the corporation to create general public benefit or specific public benefit provided:

(A) By the bylaws; or

(B) Absent controlling provisions in the bylaws, by resolutions or orders of the board of directors; and

(2) The duty to prepare the benefit report required by § 29-1304.01.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1301.02.

Legislative history of Law 19-305. — See note to § 29-1301.01.

§ 29-1303.05. Right of action.

(a) Except in a benefit enforcement proceeding, no person may bring an action or assert a claim against a benefit corporation or its directors or officers with respect to:

(1) Failure to pursue or create general public benefit or a specific public benefit set forth in its articles of incorporation; or

(2) Violation of a duty or standard of conduct under this chapter.

(b) A benefit corporation shall not be liable for monetary damages under this chapter for any failure of the benefit corporation to pursue or create general public benefit or a specific public benefit.

(c) A benefit enforcement proceeding may be commenced or maintained only:

(1) Directly by the benefit corporation; or

(2) Derivatively by:

(A) A shareholder;

(B) A director;

(C) A person or group of persons that owns beneficially or of record 5% or more of the equity interests in an entity of which the benefit corporation is a subsidiary; or

(D) Other persons as specified in the articles of incorporation or bylaws of the benefit corporation.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Legislative history of Law 19-305. — See note to § 29-1301.01.

Subchapter IV. Transparency.

§ 29-1304.01. Annual benefit report.

(a) A benefit corporation shall prepare an annual benefit report including all of the following:

(1) A narrative description of:

(A) The process and rationale for selecting the third-party standard used to prepare the benefit report;

(B) The ways in which the benefit corporation pursued general public benefit during the year and the extent to which general public benefit was created;

(C)(i) The ways in which the benefit corporation pursued a specific public benefit that the articles of incorporation state it is the purpose of the benefit corporation to create; and

(ii) The extent to which that specific public benefit was created; and

(D) Any circumstances that have hindered the pursuit or creation of the general public benefit purpose and any specific public benefit purpose.

(2) An assessment of the overall social and environmental performance of the benefit corporation against a third-party standard:

(A) Applied consistently with the application of that standard in prior benefit reports; or

(B) If the third-party standard was not applied consistently, an explanation of the reasons for any inconsistent application.

(3) The name of the benefit director and the benefit officer, if any, and the address to which correspondence to each of them may be directed.

(4) The compensation paid by the benefit corporation during the year to each director in the capacity of a director.

(5) The name of each person that owns 5% or more of the outstanding shares of the benefit corporation either:

(A) Beneficially, to the extent known to the benefit corporation without independent investigation; or

(B) Of record.

(6) The statement of the benefit director described in § 29-1303.02(c).

(7) A statement of any connection between the organization that established the third-party standard, or its directors, officers, or material owners, and the benefit corporation or its directors, officers, or material shareholders, including any financial or governance relationship which might materially affect the credibility of the use of the third-party standard.

(8) If the benefit corporation has dispensed with or restricted the discretion or powers of the board of directors, a description of:

(A) The persons that exercise the powers, duties, and rights and have the immunities of the board of directors; and

(B) The person with the powers, duties, and rights of a benefit director if required by § 29-1303.02(e).

(b) A benefit corporation shall annually send a benefit report to each shareholder:

(1) Within 120 days following the end of the fiscal year of the benefit corporation; or

(2) At the same time that the benefit corporation delivers any other annual report to its shareholders.

(c) A benefit corporation shall post all of its benefit reports on the public portion of its website, if any, but the compensation paid to directors and financial or proprietary information included in the benefit reports may be omitted from the benefit reports as posted.

(d) If a benefit corporation does not have a website, the benefit corporation shall provide a copy of its most recent benefit report, without charge, to any person that requests a copy.

(e) The benefit corporation shall deliver a copy of the benefit report to the Mayor for filing when filing the biennial report required by § 29-102.11, but the compensation paid to directors and financial or proprietary information included in the benefit report may be omitted from the copy of the benefit report that is delivered to the Mayor.

(May 1, 2013, D.C. Law 19-305, § 2(b), 60 DCR 2735.)

Section references. — This section is referenced in § 29-1303.02 and § 29-1303.04.

Legislative history of Law 19-305. — See note to § 29-1301.01.

TITLE 31. INSURANCE AND SECURITIES.**SUBTITLE II. REGULATION OF INSURANCE INDUSTRY GENERALLY.****Chapter****11A. Insurance Producers.****SUBTITLE III. FIRE, CASUALTY, MARINE, MOTOR VEHICLE AND
RELATED INSURANCE.****24. Compulsory/No-Fault Motor Vehicle Insurance.****SUBTITLE VII. PROPERTY AND RELATED INSURANCE.****50C. Portable Electronics Insurance.**

**SUBTITLE II. REGULATION OF INSURANCE INDUSTRY
GENERALLY.**

CHAPTER 11A. INSURANCE PRODUCERS.

Sec.

31-1131.07. License.

§ 31-1131.07. License.

(a) Unless denied licensure under § 31-1131.12, persons who have met the requirements of §§ 31-1131.05 and 31-1131.06 shall be issued a resident insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of insurance permitted under law or regulations:

(1) Life, consisting of insurance coverage on human lives, including benefits of endowment and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income;

(2) Accident and health or sickness, consisting of insurance coverage for sickness, bodily injury, or accidental death, including benefits for disability income;

(3) "Property, consisting of insurance coverage for the direct or consequential loss or damage to property of every kind;

(4) Casualty, consisting of insurance coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property;

(5) Variable life and variable annuity, consisting of insurance coverage provided under variable life insurance contracts and variable annuities;

(6) Personal lines, consisting of property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(7) Repealed;

(8) Bail bonds, consisting of insuring or guaranteeing that a person will attend court when required, or will obey the orders or judgment of a court, as a condition to the release of the person from confinement;

(9) Surplus lines, consisting of insurance coverage provided pursuant to § 31-2502.40(a) by a company not otherwise authorized to do business in the District; and

(10) Any of the following limited lines of insurance:

(A) Car rental;

(B) Credit;

(C) Crop;

(C-i) Portable electronics;

(D) Surety;

(E) Travel;

(F) A limited line of insurance established by the Commissioner by rule; and

(G) A line of insurance the Commissioner recognizes as a limited line of insurance for the purposes of complying with § 31-1131.08(e).

(a-1) A person shall not be issued a license in the bail bonds or surplus lines line of insurance unless the person holds, or is simultaneously issued, a license in the property or casualty line of insurance.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) The license shall contain the licensee's name, address, personal identification number, the date of issuance, the lines of authority, the expiration date, and any other information the Commissioner considers useful or necessary.

(f) Repealed.

(g) To assist in the performance of the Commissioner's duties, the Commissioner may contract with a third party, including the NAIC, or its affiliates or subsidiaries, to perform any ministerial functions, including the collection of fees, related to producer licensing that the Commissioner may consider appropriate.

(Mar. 27, 2003, D.C. Law 14-264, § 7, 50 DCR 260; May 13, 2008, D.C. Law 17-155, § 2(g), 55 DCR 3683; May 1, 2013, D.C. Law 19-306, § 201, 60 DCR 2746.)

Cross references. — Portable electronics insurance, § 31-5051.01 et seq.

Section references. — This section is referenced in § 31-1131.02 and § 31-1131.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-306 added (a)(10)(C-i).

Legislative history of Law 19-306. — Law 19-306, the "Portable Electronics Insurance

Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-986. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 5, 2013, it was assigned Act No. 19-673 and transmitted to Congress for its review. D.C. Law 19-306 became effective on May 1, 2013.

SUBTITLE III. FIRE, CASUALTY, MARINE, MOTOR VEHICLE AND RELATED INSURANCE.

CHAPTER 24. COMPULSORY/NO-FAULT MOTOR VEHICLE INSURANCE.

Sec.

31-2402. Definitions.

31-2403.01. Pre-litigation discovery of insurance.

Sec.

31-2406. Availability of required and optional insurance and benefits.

§ 31-2402. Definitions.

As used in this chapter:

(1) The term "accident" means an untoward and unforeseen occurrence arising out of the maintenance or use of:

(A) A motor vehicle;

(B) A vehicle operated or designed for operation upon a highway by power other than muscular power with respect only to any pedestrian or any occupant of that vehicle other than the owner or operator of that vehicle; or

(C) Any other vehicle covered by the insurance coverages required by § 31-2406.

(2) Repealed.

(3) The term "beneficiary" means a person who is named in a policy of personal injury protection insurance as a person who is entitled to the benefits of personal injury protection insurance.

(4) The term "Department" means the Department of Motor Vehicles established pursuant to § 50-901.

(5) The term "Director" means the Director of the Department or the Director's designee.

(6) The term "District" means the District of Columbia.

(7) The term "highway" means the entire width between the boundary lines of every publicly maintained way, when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

(8) The term "individual" means a natural person.

(9) The term "injury" means bodily harm to an individual that is sustained in an accident, and any illness, disease, or death resulting from that bodily harm.

(9A) "Insurance Identification Card" means a document issued by an insurer as proof of insurance for a motor vehicle that lists the name of the insurer, the policy number, the name of the insured, the period of coverage for the insurance, and the make, model, and vehicle identification number.

(10) The term "insured" means a named insured or any other person insured in an insurance policy, with the exception of those persons specifically excluded by endorsement on the insurance policy.

(11) The term "insurer" means any person, company, or professional association licensed in the District of Columbia that provides motor vehicle liability protection or any self-insurer.

(12) The term "license" means a license or permit to operate a motor vehicle issued under the laws of the District.

The term "license" includes a driver's license; a temporary or learner's permit; the privilege of any person to drive a motor vehicle whether or not such person holds a valid license issued by the District government; the privilege conferred upon a nonresident by the laws of the District pertaining to the operation by a nonresident of a motor vehicle; or any other license issued under authority delegated to the Director.

(13) The term "loss" means economic detriment incurred as a result of an accident resulting in injury, consisting of and limited to medical and rehabilitation expenses, work loss inclusive of replacement services loss, and death benefits. The term "loss" does not include noneconomic loss.

(14) The term "maintenance or use" with respect to a motor vehicle means any activity involving or related to the operation of or transportation by a motor vehicle, including occupying, entering into, alighting from, repairing, or servicing.

The term "maintenance or use" does not include conduct within the course of a business of repairing, servicing, or otherwise maintaining motor vehicles unless the conduct is off the business premises or unless it is conduct in the course of loading or unloading a motor vehicle.

(15) The term "Mayor" means the Mayor of the District of Columbia or the Mayor's designee.

(16) The term "motorcycle" means a motor vehicle that has a seat or saddle for the use of the operator and is designed to travel on no more than 3 wheels in contact with the ground. The term "motorcycle" does not include a 3-wheeled motor vehicle with a cab and windshield tractor, a motor-driven cycle, or a motorized bicycle unless operated at speeds in excess of 30 miles per hour.

(17) The term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by § 50-2201.02(12), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.

(18) The term "named insured" means the person identified in the declaration of the insurance policy.

(19) The term "noneconomic loss" means pain, suffering, inconvenience, physical or mental impairment, and other nonpecuniary damage recoverable under the tort law applicable to injury arising out of the maintenance or use of a motor vehicle.

(20) The term "operator" means a person who drives or is in actual physical control of a motor vehicle or who is exercising control over or steering a motor vehicle being pushed or towed by a motor vehicle.

(21) The term "owner" means any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or other authority or other entity having the property or title to a vehicle or bicycle used or operated in the District; any registrant of a vehicle used or operated in the

District; or any person, corporation, firm, agency, association, organization, or federal, state, or local government agency or authority or other entity in the business of renting or leasing vehicles or bicycles to be used or operated in the District.

(22) The term "passenger vehicle" means any vehicle other than one registered as a commercial vehicle or for livery, rental, sightseeing, or taxi purposes.

(23) The term "person" means any natural person, firm, copartnership, association, government, government agency, or instrumentality.

(24) The term "personal injury protection" means the benefits provided pursuant to § 31-2404.

(25) The term "registration certificate" means a certificate or its duplicate issued by the Director to a registrant, containing any or all of the information that appeared on his or her application for registration, the number of the owner's identification tags issued to the registrant for use on the vehicle described on the card and other information as the Director may determine, or a registration certificate or its duplicate, issued by the Director to a new car dealer, or used car dealer, containing any or all of the information that appeared on his or her application for dealer's identification tags, the number of the dealer's identification tags issued to the new car dealer or used car dealer for use as provided by 18 DCMR and any other information the Director may require.

(26) The term "self-insurer" means any person having received a certificate of self-insurance issued by the Mayor pursuant to § 50-1301.79.

(27) The term "stacking" means a legal procedure wherein the limits of liability applicable to a single motor vehicle liability policy of insurance are added to the limits of liability of all motor vehicles which may be insured by 1 motor vehicle liability policy of insurance involved in 1 accident.

(28) The term "state" means any state, territory, or possession of the United States or any possession or territory of Canada. The term "state" includes the District of Columbia.

(29) The term "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking or the Commissioner's designee.

(30) The term "survivor" means an individual identified in the wrongful death statute of the District, as one entitled to receive benefits by reason of the death of a victim.

(31) The term "taxicab" means any public vehicle for hire having a seating capacity of less than 8 passengers, exclusive of the driver, except ambulances, funeral cars, vehicles used exclusively for sightseeing purposes, or vehicles for which the rate is fixed solely by the hour.

(32) The term "trailer" means a vehicle with or without motor power intended to be used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(32A) The term "underinsured motor vehicle" means an insured motor vehicle where the limits on 3rd-party personal liability or property damage

coverage under the insurance required by § 31-2406 are insufficient to pay the loss up to the limit of uninsured motor vehicle coverage as requested by the insured.

(33) The term “vehicle” means a motor vehicle; a trailer; or an appliance moved over a highway on wheels or traction tread including draft animals and beasts of burden.

(34) The terms “victim” and “motor vehicle accident victim” mean an individual who sustains injury as a result of an accident.

(Sept. 18, 1982, D.C. Law 4-155, § 3, 29 DCR 3491; Mar. 15, 1985, D.C. Law 5-176, § 2, 32 DCR 748; Mar. 4, 1986, D.C. Law 6-96, § 2(a), 32 DCR 7245; May 21, 1997, D.C. Law 11-268, § 10(v), 44 DCR 1730; Mar. 26, 1999, D.C. Law 12-184, § 2, 45 DCR 7796; Apr. 27, 2001, D.C. Law 13-289, § 101(a), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 2, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; June 11, 2004, D.C. Law 15-166, § 4(n), 51 DCR 2817; June 8, 2006, D.C. Law 16-117, § 201(a), 53 DCR 2548; Mar. 6, 2007, D.C. Law 16-224, § 201, 53 DCR 10225; Apr. 27, 2013, D.C. Law 19-290, § 2(a), 60 DCR 2343.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-290 rewrote (16) and (17).

Legislative history of Law 19-290. — Law 19-290, the “Motorized Bicycle Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-995. The Bill was adopted on

first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

§ 31-2403.01. Pre-litigation discovery of insurance.

(a) After a claimant makes a written claim for compensation or damages concerning a vehicle accident, and provides the documents described in subsection (b) or (c) of this section to an insurer, the claimant shall be entitled to obtain from the insurer documentation of the applicable limits of coverage in any insurance agreement under which the insurer may be liable to:

- (1) Satisfy all or part of the claim; or
- (2) Indemnify or reimburse for payments made to satisfy the claim.

(b) For a claimant to obtain the documentation described in subsection (a) of this section from the insurer, the claimant shall provide the following, in writing, to the insurer:

- (1) The date of the vehicle accident;
- (2) The name and last known address of the alleged tortfeasor;
- (3) A copy of the vehicle accident report, if any;
- (4) The insurer’s claim number, if available;
- (5) The claimant’s health care bills and documentation of the claimant’s loss of income, if any, resulting from the vehicle accident; and
- (6) The records of health care treatment for the claimant’s injuries caused by the vehicle accident.

(c) If the claim is brought by the estate of an individual or a beneficiary of the individual, whose death resulted from a vehicle accident, the insurer must

provide the documentation described in subsection (a) of this section if the claimant provides the following, in writing, to the insurer:

- (1) The date of the vehicle accident;
- (2) The name and last known address of the alleged tortfeasor;
- (3) A copy of the vehicle accident report, if any;
- (4) The insurer's claim number, if available;
- (5) A copy of the decedent's death certificate issued in the District of Columbia or another jurisdiction;
- (6) A copy of the letters of administration issued to appoint the personal representative of the decedent's estate in the District of Columbia or a substantially similar document issued by another jurisdiction;
- (7) The name of each beneficiary of the decedent, if known;
- (8) The relationship to the decedent of each known beneficiary of the decedent;
- (9) The health care bills for health care treatment, if any, of the decedent resulting from the vehicle accident; and
- (10) The records of health care treatment for injuries to the decedent caused by the vehicle accident.

(d) After receipt of the documents pursuant to either subsection (b) or (c) of this section, the insurer shall respond in writing within 30 days of receipt of the request issued pursuant to subsection (a) of this section and shall disclose the limits of coverage, of all policies, regardless of whether the insurer contests the applicability of the policy to the claim.

(e) Disclosure of documentation required under this section shall not constitute:

(1) An admission that the asserted claim is subject to the applicable agreement between the insurer and the alleged tortfeasor; or

(2) A waiver of any term or condition of the applicable agreement between the insurer and the alleged tortfeasor or any right of the insurer, including any potential defense concerning coverage or liability.

(f) An insurer, and the employees and agents of an insurer, may not be civilly or criminally liable for disclosure of the required documentation.

(g) Information concerning the insurance policy is not, by reason of disclosure pursuant to this section, admissible as evidence at trial.

(h) For the purposes of this section, the term "vehicle accident" includes accidents involving bicyclists.

(Sept. 18, 1982, D.C. Law 4-155, § 4a, as added Apr. 23, 2013, D.C. Law 19-281, § 2, 60 DCR 2129.)

Legislative history of Law 19-281. — Law 19-281, the "Pre-litigation Discovery of Insurance Coverage Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-890. The Bill was adopted on first and sec-

ond readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25, 2013, it was assigned Act No. 19-646 and transmitted to Congress for its review. D.C. Law 19-281 became effective on April 23, 2013.

§ 31-2406. Availability of required and optional insurance and benefits.

(a) *In general.* —

(1)(A) After consultation with insurers authorized to sell motor vehicle insurance in the District, the Commissioner shall from time to time approve, with any reasonable modifications, a reasonable plan or plans to assure the availability, to all owners of motor vehicles, of the insurance required to be maintained and of the insurance required to be offered by this chapter. The plan shall provide for suitable apportionment, by the manager or committee designated to operate the plan, among insurers of applicants for any of the insurance who are unable to obtain insurance reasonably through ordinary methods.

(B) When a plan has been approved by the Commissioner, all insurers authorized to sell motor vehicle insurance in the District shall subscribe thereto, cooperate therewith, and participate therein; provided, however, that no insurer shall be required to quote plan rates to applicants for voluntary insurance or to seek waivers from the plan before selling such voluntary insurance.

(C) Any applicant for a policy, any named beneficiary or insured under a policy issued pursuant to the plan, and any insurer may appeal to the Commissioner from any decision of the manager or committee designated to operate the plan.

(D) Each insurer selling motor vehicle insurance in the District shall be required to offer insurance which shall provide at least all minimum benefits required by this chapter with respect to: (i) property damage liability; (ii) third-party personal liability; and (iii) uninsured motorist protection. In addition, each insurer shall offer optional personal injury protection insurance required by § 31-2404 and underinsured motor vehicle coverage as required by this section. Taxicab insurers and self-insurers shall be exempt from the requirement to offer optional personal injury protection insurance. Taxicab insurers and self-insurers shall also be exempt from the requirements of § 31-2404 that they offer uninsured motorist protection and underinsured motor vehicle coverage.

(2) Each insurer selling motor vehicle insurance in the District shall make the insurance policy understandable to policyholders. Each insurance company shall provide to policy holders at least annually the following information:

(A) A listing of each type of coverage available; and

(B) An explanation of the mandatory insurance and required options created under this chapter.

(2A) For policies issued or reissued after January 1, 2007, insurers shall be required to provide at least 2 copies of an Insurance Identification Card to the policyholder of the vehicle registered in the District of Columbia. The Insurance Identification Card must be carried in the insured motor vehicle for production upon demand. The insurer shall provide additional copies of the Insurance Identification card upon request of the insured.

(3), (4) Repealed.

(5) No insurer authorized to sell motor vehicle insurance in the District shall increase the rates charged an insured on account of an accident unless it is first determined that the accident was caused by the fault of the insured.

(b) *Property damage insurance.* — Property damage insurance shall provide that any liability to an insured to pay for property damage to any vehicle or other property not owned or controlled by the insured, in accordance with applicable law, shall be paid by the applicable insurer up to an amount requested by the named insured. The minimum amount of property damage liability insurance coverage that a named insured shall purchase is \$10,000 for property damage in any 1 accident.

(c) *Third-party personal liability.* — Third-party personal liability coverage shall provide that any liability of an insured to pay for injury arising from an accident within or outside the District of Columbia, in accordance with applicable law, shall be paid by the insurer up to the amount established in the policy. The minimum amount of 3rd-party personal liability coverage that an insured shall purchase shall be \$25,000 per person injured in any 1 accident and \$50,000 for all persons injured in any 1 accident.

(c-1) *Underinsured motor vehicle coverage.* — Underinsured motor vehicle coverage is for the protection of an insured who is legally entitled to recover damages from the owner or operator of an underinsured motor vehicle. Each insurer shall offer, except for the operation of motorcycles and motor-driven cycles, optional underinsured motor vehicle coverage in amounts up to the amounts of the uninsured motorist coverage as requested by the insured. Once an insured has rejected this underinsured motor vehicle coverage the insurer does not have to reoffer it. The insurer shall not be required to obtain or maintain written rejections of the underinsured motor vehicle coverage. The benefits provided by the underinsured motor vehicle coverage shall be subject to the same provisions as denials or exclusions of coverages, insolvency, subrogation, and set-off as provided in the uninsured motorist coverage. Nothing in this section shall prohibit the inclusion of underinsured motor vehicle coverage in any uninsured motor vehicle coverage provided in compliance with this chapter. Insurance that includes underinsured motor vehicle coverage may include terms and conditions that preclude stacking of underinsured motor vehicle coverage.

(d), (e) Repealed.

(f) *Mandatory uninsured motorist protection.* —

(1) For the purposes of this subsection, the term “uninsured motor vehicle” means a motor vehicle which:

(A) Is a motor vehicle which is not insured by a motor vehicle liability policy applicable to the accident;

(B) Is covered by a motor vehicle liability policy of insurance but the insurer denies coverage for any reason or becomes the subject of insolvency proceedings in any jurisdiction; or

(C) Is a motor vehicle which causes bodily injury or property damage and whose owner or operator cannot be identified.

(2) Each insurer selling motor vehicle insurance in the District with respect to any motor vehicle registered or principally garaged in the District

shall include coverage for bodily injury or death in amounts of \$25,000 per person injured in any 1 accident, or \$50,000 for all persons injured in any 1 accident, and coverage for property damage in an amount of \$5,000 for property damage in any 1 accident for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.

(3) Any payments for property damage made pursuant to this subsection shall be subject to a deductible amount of \$200.

(4) The named insured may require the issuance of coverage for bodily injury or death and property damage in accordance with a schedule of optional higher amounts up to the amount of \$100,000 per person injured in any 1 accident or \$300,000 for all persons injured in any 1 accident, and up to \$25,000 for property damages for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.

(5) To the extent of any payment made to any person by the insurer under the coverage required by this section and subject to the terms and conditions of the coverage, the insurer is entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of any person against any other person legally responsible for the bodily injury or death for which the payment is made, including any amount recoverable from an insurer which is or becomes the subject of an insolvency proceeding through such proceedings or in any other lawful manner.

(6) No insurer shall attempt to recover any amount against the insured of an insurer which is or becomes the subject of insolvency proceedings.

(7) Any motor vehicle policy of insurance may include terms and conditions that preclude stacking of uninsured motor vehicle coverages.

(g) *Prohibitions.* — A victim is prohibited from claiming personal injury protection benefits under this chapter, other than to compensate for any deductible, if the victim is eligible for compensation for the loss covered by personal injury protection from another insurer or another insurance coverage, unless the victim has exhausted benefits offered by the insurer or insurance coverage.

(h) *Additional reporting obligations.* — The Director may require a person whose driver's license or registration was revoked to obtain insurance coverage that includes additional reporting obligations, including SR 22 insurance coverage, prior to the issuance or reinstatement of a driver's license or registration, or both.

(Sept. 18, 1982, D.C. Law 4-155, § 7, 29 DCR 3491; Mar. 4, 1986, D.C. Law 6-96, § 2(e), 32 DCR 7245; Feb. 24, 1987, D.C. Law 6-192, § 19, 33 DCR 7836; Sept. 20, 1996, D.C. Law 11-160, § 2(b), 43 DCR 3722; May 21, 1997, D.C. Law 11-268, § 10(v), 44 DCR 1730; June 8, 2006, D.C. Law 16-117, § 201(b), 53 DCR 2548; Mar. 14, 2007, D.C. Law 16-279, § 101, 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, §§ 197(a), 246, 56 DCR 1117; Apr. 27, 2013, D.C. Law 19-290, § 2(b), 60 DCR 2343.)

Section references. — This section is referenced in § 5-114.01, § 31-2402, § 31-2403, § 31-2404, § 31-2405, and § 31-2411.

Effect of amendments.

The 2013 amendment by D.C. Law 19-290

substituted “motorcycles and motor-driven cycles” for “motorcycles” in (c-1).

Legislative history of Law 19-290. — See note to § 31-2402.

SUBTITLE VII. PROPERTY AND RELATED INSURANCE.

CHAPTER 50C. PORTABLE ELECTRONICS INSURANCE.

Sec.	Sec.
31-5051.01. Definitions.	31-5051.04. Termination and modification of coverage.
31-5051.02. License requirements; training; sale of plans.	31-5051.05. Penalties.
31-5051.03. Billing and collection of premiums.	31-5051.06. Rules.

§ 31-5051.01. Definitions.

For purposes of this chapter, the term:

(1) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(2) “Customer” means a person who purchases portable electronics or services.

(3) “District” means the District of Columbia.

(4) “Enrolled customer” means a customer who elects coverage under a portable electronics insurance policy issued to a vendor of portable electronics.

(5) “Location” means any physical location in the District or any website, call center site, or similar location directed to residents of the District.

(6) “Portable electronics” means electronic devices that are portable in nature, their accessories and services related to the use of the device.

(7)(A) “Portable electronics insurance” means insurance providing coverage for the repair or replacement of portable electronics, which may provide coverage for portable electronics against any one or more of the following causes of loss:

- (i) Loss;
- (ii) Theft;
- (iii) Inoperability due to mechanical failure;
- (iv) Malfunction; or
- (v) Damage or other similar causes of loss.

(B) The term “portable electronics insurance” does not include:

(i) A service contract or extended warranty providing coverage limited to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling, power surges, or normal wear and tear;

(ii) A policy of insurance covering a seller’s or a manufacturer’s obligations under a warranty; or

(iii) A homeowner's, renter's, private passenger automobile, commercial, multi-peril, or similar policy.

(8) "Portable electronics transaction" means:

(A) The sale or lease of portable electronics by a vendor to a customer; or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer.

(9) "Supervising entity" means a business entity that is a licensed insurer or insurance producer that is appointed by an insurer to supervise the administration of a portable electronics insurance program.

(10) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly.

Legislative history of Law 19-306. — Law 19-306, the "Portable Electronics Insurance Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-986. The Bill was adopted on first and second readings on

Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 5, 2013, it was assigned Act No. 19-673 and transmitted to Congress for its review. D.C. Law 19-306 became effective on May 1, 2013.

§ 31-5051.02. License requirements; training; sale of plans.

(a) A vendor is required to hold a limited-lines license to sell or offer coverage under a policy of portable electronics insurance.

(b)(1) A limited-lines license issued under this section shall authorize any employee or authorized representative of the vendor to sell or offer coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions and such employee or authorized representative shall not be subject to licensure as an insurance producer; provided, that the insurer issuing the portable electronics insurance either directly supervises or appoints a supervising entity to supervise the administration of the training program, including development of a training program, for employees and authorized representatives of the vendors.

(2)(A) The training required by this subsection shall comply with the following requirements:

(i) The training shall be provided to employees and authorized representatives of vendors who are directly engaged in the activity of selling or offering portable electronics insurance;

(ii) The training may be provided in electronic form; provided, that, if conducted in an electronic form, the supervising entity shall implement a supplemental education program regarding the portable electronics insurance product that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under subsection (d) of this section.

(B) The training provided pursuant to this subsection shall not be subject to the prior approval requirement of § 31-1131.05a(b).

(c) No employee or authorized representative of a vendor of portable electronics shall advertise, represent, or otherwise hold himself or herself out as a non-limited lines licensed insurance producer.

(d) At every location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer that:

(1) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer's homeowner's insurance policy, renter's insurance policy, or other source of coverage;

(2) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(3) Summarize the material terms of the insurance coverage, including:

(A) The identity of the insurer;

(B) The identity of the supervising entity;

(C) The amount of any applicable deductible and how it is to be paid;

(D) Benefits of the coverage; and

(E) Key terms and conditions of coverage, such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment;

(4) Summarize the process for filing a claim, including a description of how to return portable electronics and the maximum fee applicable in the event the customer fails to comply with any equipment return requirements; and

(5) State that an enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(e) Notwithstanding any other provision of law, employees or authorized representatives of a vendor of portable electronics shall not be compensated based primarily on the number of customers enrolled for portable electronics insurance coverage but may receive compensation for activities under the limited-lines license that is incidental to their overall compensation.

(f) The supervising entity appointed to supervise a vendor's portable electronics insurance program shall maintain a registry of vendor locations that are authorized to sell or solicit portable electronics insurance coverage in the District. Upon request by the Commissioner and with 10 days notice to the supervising entity, the registry shall be open to inspection and examination by the Commissioner during regular business hours of the supervising entity.

(g) Applications for licensure under this section shall be made by a vendor in accordance with § 31-1131.06 for residents of the District and § 31-1131.08 for non-residents. Information regarding a vendor's officers, directors, or shareholders submitted in connection with a vendor's application for licensure shall be limited to an employee or officer of the vendor that is designated by the applicant as the person responsible for the vendor's compliance with the requirements of this section; provided, that if the vendor derives more than 50% of its revenue from the sale of portable electronics insurance, the

information shall be provided for all officers, directors, and shareholders of record having beneficial ownership of 10% or more of any class of securities registered under the federal securities law.

(May 1, 2013, D.C. Law 19-306, § 102, 60 DCR 2746.)

Legislative history of Law 19-306. — See note to § 31-5051.01.

§ 31-5051.03. Billing and collection of premiums.

(a) Charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the portable electronics insurance coverage is included with the purchase or lease of portable electronics or related services, the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services.

(b) Vendors billing and collecting charges for portable electronics insurance coverage shall not be required to maintain funds collected in a segregated account; provided, that the vendor is authorized by the insurer to hold the funds in an alternative manner and remits the amounts to the supervising entity within 60 days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer.

(c) Vendors may receive compensation for billing and collection services.

(May 1, 2013, D.C. Law 19-306, § 103, 60 DCR 2746.)

Legislative history of Law 19-306. — See note to § 31-5051.01.

§ 31-5051.04. Termination and modification of coverage.

(a) Notwithstanding any other provision of law:

(1) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least 30 days notice.

(2) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy or endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating that a change in the terms and conditions has occurred and a summary of material changes.

(3) Notwithstanding paragraph (1) of this subsection, an insurer may terminate an enrolled customer's enrollment under a portable electronics insurance policy upon 15 days notice for discovery of fraud or material

misrepresentation in obtaining coverage or in the presentation of a claim under the policy.

(4) Notwithstanding paragraph (1) of this subsection, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(A) For nonpayment of premium;

(B) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(C) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within 30 days after exhaustion of the limit; provided, that if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(5) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination of the policy and the effective date of termination. The written notice shall be mailed or delivered to the enrolled customer at least 30 days before the termination.

(b)(1) Whenever notice or correspondence with respect to a policy of portable electronics insurance is required pursuant to this section or is otherwise required by law, it shall be in writing and sent within the notice period, if any, specified within the statute or regulation requiring the notice or correspondence. Notwithstanding any other provision of law, notices and correspondence may be sent either by mail or by electronic means as set forth in this subsection.

(2) If the notice or correspondence is mailed, it shall be sent to the vendor of portable electronics at the vendor's mailing address specified for such purpose and to its affected enrolled customer's last known mailing address on file with the insurer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service.

(3) If the notice or correspondence is sent by electronic means, it shall be sent to the vendor of portable electronics at the vendor's electronic mail address specified for such purpose and to its affected enrolled customer's last known electronic mail address as provided by each enrolled customer to the insurer or vendor of portable electronics, as the case may be. For purposes of this subsection, an enrolled customer's provision of an electronic mail address to the insurer or vendor of portable electronics, as the case may be, shall be deemed consent to receive notices and correspondence by electronic means as long as disclosure to that effect is provided to the customer. The insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice or correspondence was sent.

(c) Notice or correspondence required by this section or otherwise required by law may be sent on behalf of an insurer or vendor, as the case may be, by the supervising entity appointed by the insurer.

(May 1, 2013, D.C. Law 19-306, § 104, 60 DCR 2746.)

Legislative history of Law 19-306. — See note to § 31-5051.01.

§ 31-5051.05. Penalties.

(a) A vendor shall report any violation of this chapter to the Commissioner within 30 days of discovery of the violation by the vendor.

(b) If a vendor of portable electronics or its employee or authorized representative violates any provision of this chapter, the Commissioner may:

(1) After notice and hearing, impose fines not to exceed \$2,500 per violation or a \$10,000 maximum fine in the aggregate for such conduct; and

(2) After notice and hearing, impose other penalties that the Commissioner considers necessary and reasonable to carry out the purpose of this chapter, including:

(A) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred; and

(B) Suspending or revoking the ability of individual employees or authorized representatives to act under the limited lines license.

(May 1, 2013, D.C. Law 19-306, § 105, 60 DCR 2746.)

Legislative history of Law 19-306. — See note to § 31-5051.01.

§ 31-5051.06. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed disapproved.

(May 1, 2013, D.C. Law 19-306, § 106, 60 DCR 2746.)

Legislative history of Law 19-306. — See note to § 31-5051.01.

TITLE 32. LABOR.

Chapter

2. Employment of Minors.

10. Minimum Wages.

13. Wages and Workplace Fraud.

15. Retail Electric Competition and Consumer Protection.

CHAPTER 2. EMPLOYMENT OF MINORS.

Subchapter I. General

Sec.

32-213. Penalties.

Subchapter I. General.

§ 32-213. Penalties.

(a) A person commits an offense under this subchapter if that person:

(1) Employs a minor or permits a minor to work in violation of this subchapter, of any regulation promulgated by the Board of Education pursuant to § 32-224, or of any order issued under the provisions of § 32-203; or

(2) Interferes with the Board of Education, its officers or agents, or any other person authorized by the District to inspect places of employment of minors.

(b) A person convicted of a 1st offense under this section shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned not less than 10 days nor more than 30 days, or both. A person convicted of a 2nd or subsequent offense under this section shall be fined not less than \$3,000 nor more than \$5,000, or imprisoned not less than 30 days nor more than 90 days, or both. Each day during which a violation of this subchapter occurs shall constitute a separate offense.

(c) The fines set forth in this section shall not be limited by § 22-3571.01.

(May 29, 1928, 45 Stat. 1003, ch. 908, § 15; renumbered as § 13 and amended June 15, 1976, D.C. Law 1-68, § 2(16), 23 DCR 521; July 12, 1988, D.C. Law 7-135, § 2(b), 35 DCR 4114; June 11, 2013, D.C. Law 19-317, § 112(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 10. MINIMUM WAGES.

Subchapter I. General

Sec.

32-1011. Penalties; prosecution.

Subchapter I. General.

§ 32-1003. Requirements.

Section references. — This section is referenced in § 4-205.19k, § 32-1002, § 32-1004, § 32-1006, and § 32-1607.

CASE NOTES

ANALYSIS

Liquidated damages.

Weight and sufficiency of evidence.

Liquidated damages.

Employee was awarded liquidated damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act (DCWRA), D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act (FLSA), 29 U.S.C.S. § 200 et seq., because the employee proved that she performed the work for which she was improperly compensated and the amount and extent of that work, and the employer failed to demonstrate good faith under the DCWRA, D.C. Code § 32-1012(a), and FLSA, 29 U.S.C.S. § 260; the employer's reli-

ance on the opinion of an accounting firm as to his compliance was suspect. *Romero v. Solloso*, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

Weight and sufficiency of evidence.

Employee was awarded compensatory damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act, D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act, 29 U.S.C.S. § 200 et seq., because the employee met her initial burden of proving that she performed the work for which she was improperly compensated and the amount and extent of that work; the employer presented no credible evidence rebutting the schedule as articulated by the employee. *Romero v. Solloso*, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

§ 32-1011. Penalties; prosecution.

(a) Any person who willfully violates any of the provisions of § 32-1010 shall, upon conviction, be subject to a fine of not more than \$10,000, or to imprisonment of not more than 6 months, or both.

(b) No person shall be imprisoned under this section except for an offense committed after the conviction of that person for a prior offense under this section.

(c) Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia.

(d) In addition to and apart from the penalties or remedies provided for in this section or § 32-1012, the Mayor shall assess and collect administrative penalties up to a maximum of \$300 for the first violation and up to a maximum of \$500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when

determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this subchapter.

(e) No administrative penalty shall be collected unless the Mayor provides any person alleged to have violated a provision of § 32-1010 notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If an informal hearing is requested, the Mayor shall issue a final order following the hearing containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(f) The fine set forth in this section shall not be limited by § 22-3571.01.

(Mar. 25, 1993, D.C. Law 9-248, § 12, 40 DCR 761; Apr. 3, 2001, D.C. Law 13-245, § 2, 48 DCR 647; June 11, 2013, D.C. Law 19-317, § 112(d), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (f).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 32-1012. Civil liability.

Section references. — This section is referenced in § 32-1011.

CASE NOTES

Damages.

Employee was awarded liquidated damages in her action alleging that an employer violated the District of Columbia Minimum Wage Revision Act (DCWRA), D.C. Code § 32-1001 et seq., and the Fair Labor Standard Act (FLSA), 29 U.S.C.S. § 200 et seq., because the employee proved that she performed the work for which

she was improperly compensated and the amount and extent of that work, and the employer failed to demonstrate good faith under the DCWRA, D.C. Code § 32-1012(a), and FLSA, 29 U.S.C.S. § 260; the employer’s reliance on the opinion of an accounting firm as to his compliance was suspect. *Romero v. Solloso*, 2013 D.C. Super. LEXIS 1 (Jan. 15, 2013).

CHAPTER 13. WAGES AND WORKPLACE FRAUD.

Subchapter I. Payment and Collection of Wages

Sec.
32-1307. Penalties.

Subchapter II. Workplace Fraud

Sec.
32-1331.01. Definitions.
32-1331.02. Application.

Sec.		Sec.	
32-1331.03.	Deemed employers.	32-1331.09.	Private right of action.
32-1331.04.	Workplace fraud prohibited.	32-1331.10.	Retaliation prohibited.
32-1331.05.	Investigation of complaints. [Contingent upon funding].	32-1331.11.	Provisions relating to contracts with public bodies.
32-1331.06.	Hearings. [Contingent upon funding].	32-1331.12.	Employer record-keeping requirements.
32-1331.07.	Penalties.	32-1331.13.	Further acts prohibited; penalty.
32-1331.08.	Provisions of law may not be waived by agreement.	32-1331.14.	Rules.
		32-1331.15.	Workplace Fraud Fund.

Subchapter I. Payment and Collection of Wages.

§ 32-1301. Definitions.

Editor's notes. — Section 2(a) of D.C. Law Chapter 13 as subchapter I, and enacted sub-19-300 designated the existing provisions of chapter II.

§ 32-1307. Penalties.

(a) Any employer who, having the ability to pay, willfully violates any provisions of § 32-1302 or § 32-1304 or who fails to comply with any other provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall for the 1st offense be punished by a fine of not more than \$300, or by imprisonment of not more than 30 days, or in the discretion of the court, by both such fine and imprisonment; and for any subsequent offense shall be punished by a fine of not more than \$1,000 or by imprisonment of not more than 90 days, or in the discretion of the court, by both such fine and imprisonment.

(b) In addition to and apart from any other penalties or remedies provided for in this chapter, the Mayor shall assess and collect administrative penalties up to a maximum of \$300 for the first violation and up to a maximum of \$500 for each subsequent violation. The Mayor shall consider factors that include the history of previous violations by the employer, the administrative costs of the proceeding to collect, and the size of the employer's business, when determining the penalty to be imposed. In addition, the Mayor may assess more than one administrative penalty against an employer for the same adversely affected employee if the employer has violated more than one statutory provision of this chapter.

(c) No administrative penalty may be collected unless the Mayor provides any person alleged to have violated any of the provisions of this section notification of the violation, notification of the amount of the administrative penalty to be imposed, and an opportunity to request an informal hearing. If a formal hearing is requested, the Mayor shall issue a final order following the hearing, containing a finding that a violation has or has not occurred. If an informal hearing is not requested, the person to whom notification of violation was provided shall transmit to the Mayor the amount of the penalty within 15 days following notification.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

(Aug. 3, 1956, 70 Stat. 978, ch. 924, § 7; Apr. 3, 2001, D.C. Law 13-245, § 3, 48 DCR 647; June 11, 2013, D.C. Law 19-317, § 112(e), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively.

Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Workplace Fraud.

§ 32-1331.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Construction services” includes, without limitation, all building or work on buildings, structures, and improvements of all types such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heaving generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing and landscaping. The term “construction services” shall also include moving construction-related materials on the job site.

(2) “Employee” means every person, other than an exempt person or an independent contractor, providing construction services to another person.

(3) “Employer” means any individual, partnership, firm, association, joint stock company, trust, limited liability company, corporation, the administrator or executor of the estate of a deceased individual or the receiver, trustee, or successor of any of the same, or any other legal entity permitted to do business within the District of Columbia employing a person to provide services, or any person or group of persons acting directly or indirectly in the interest of an employer.

(4) “Exempt person” means an individual who:

(A)(i) Performs services in a personal capacity and who employs no individuals other than a spouse, child, or immediate family member of the individual; or

(ii) Performs services free from direction and control over the means and manner of providing the services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(B) Furnishes the tools and equipment necessary to provide the service; and

(C) Operates a business that is considered inseparable from the individual for purposes of taxes, profits, and liabilities, in which the individual exercises complete control over the management and operations of the business.

(5) “Interested party” means a person with an interest in compliance with this subchapter.

(6) “Knowingly” means having actual knowledge of, or acting with deliberate ignorance or reckless disregard for, the prohibition involved.

(7) “Mayor” mean the Mayor of the District of Columbia or his or her designated agent or agents.

(8) “Stop work order” means written notice from the Mayor to an employer to cease or hold work until the employer is given notice by the Mayor to resume work.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 201, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 2-359.07.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this subchapter.

Legislative history of Law 19-300 — Law 19-300, the “Workplace Fraud Amendment Act of 2012,” was introduced in Council and as-

signed Bill No. 19-169, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Returned without the Mayor’s signature on Feb. 11, 2013, it was assigned Act No. 19-668 and transmitted to both Houses of Congress for its review. D.C. Law 19-300 became effective on Apr. 27, 2013.

§ 32-1331.02. Application.

This subchapter shall apply only to the construction services industry.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 202, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.03. Deemed employers.

For the purposes of this subchapter, the officers of a corporation and any agents having the management thereof who knowingly permit the corporation to violate this subchapter shall be deemed to be the employers of the employees of the corporation.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 203, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.04. Workplace fraud prohibited.

(a) An employer shall not improperly classify an individual who performs services for remuneration paid by an employer as an independent contractor.

(b) An employer has improperly classified an individual when an employer-employee relationship exists, as determined by subsection (c) of this section, but the employer has not classified the individual as an employee.

(c) An employer-employee relationship shall be presumed to exist when work is performed by an individual for remuneration paid by an employer, unless to the satisfaction of the Mayor, the employer demonstrates that:

(1) The individual is an exempt person; or

(2)(A) The individual who performs the work is free from control and direction over the performance of services, subject only to the right of the person or entity for whom services are provided to specify the desired result;

(B) The individual is customarily engaged in an independently established trade, occupation, profession, or business; and

(C) The work is outside of the usual course of business of the employer for whom the work is performed.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 204, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.05. Investigation of complaints. [Contingent upon funding].

[Not funded].

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 205, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205,

206, and 212(e) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1331.06. Hearings. [Contingent upon funding].

[Not funded].

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 206, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205,

206, and 212(e) shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1331.07. Penalties.

(a) Any employer who violates or fails to comply with the requirements of this subchapter shall be subject to a civil penalty of not less than \$1,000, and

not more than \$5,000, for each violation. Each employee who is not properly classified in violation of this subchapter shall be considered a separate violation.

(b) An employer who violates § 32-1331.10 shall be subject to a civil penalty of not less than \$5,000, and not more than \$10,000, for each such violation.

(c) In addition to the penalties provided in subsections (a) and (b) of this section, an employer may be subject to a stop work order, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(d) Within 30 days of the final order, an employer found in violation of this subchapter shall be required to:

(1) Pay restitution to or on behalf of any individual not properly classified; and

(2) Otherwise come into compliance with all applicable labor laws, including those related to income tax withholding, unemployment insurance, wage and hour laws, and workers' compensation.

(e) Notwithstanding subsections (a) and (b) of this section, an employer who has been found to have violated this subchapter more than twice in a 2-year period:

(1) Shall have the choice of being assessed an administrative penalty of \$20,000 for each employee that was not properly classified, or be debarred for 5 years; and

(2) If an employer is debarred pursuant to paragraph (1) of this subsection, the employer shall be subject to a civil penalty of not less than \$5,000, and not more than \$10,000, for each employee that was not properly classified, and may be ordered to make restitution, pay any interest due, and otherwise comply with all applicable laws and regulations.

(f) Any penalty issued under this section against an employer shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the penalty was assessed; and

(2) Is engaged in the same or equivalent trade or activity.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 207, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.08. Provisions of law may not be waived by agreement.

No provision of this subchapter may in any way be contravened or set aside by private agreement. Any agreement between an employer and employee in which the employee, despite not being an exempt person, agrees to be classified as an independent contractor shall be no defense to any action to recover unpaid wages or liquidated damages.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 208, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.09. Private right of action.

(a) A person aggrieved by a violation of this subchapter, or any rule issued pursuant to this subchapter, by an employer or entity may bring a civil action in any court of competent jurisdiction within 3 years after the occurrence of the alleged violation of [this] subchapter. A person whose rights have been violated under this subchapter by an employer or entity is entitled to collect:

(1) The amount of any wages, salary, employment benefits, or other compensation denied or lost to the person by reason of the violation, plus an additional equal amount in liquidated damages;

(2) Compensatory damages and an amount up to \$500 for each violation of this subchapter or any rule issued pursuant to this subchapter; and

(3) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate.

(b) A court may order the following:

(1) Reinstatement and the payment of back wages;

(2) Fringe benefits;

(3) Seniority rights;

(4) Treble damages for lost wages or benefits; or

(5) Any combination of the remedies set forth in paragraphs (1) through (4) of this subsection.

(c) The court shall allow for reasonable attorneys fees and costs of the action to be paid by the defendant.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 209, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 32-1331.11.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.10. Retaliation prohibited.

(a) An employer may not discriminate in any manner or take adverse action against any person because the person:

(1) Makes an oral or written complaint with the employer or the Mayor alleging that the employer violated any provision of this subchapter or any rule issue pursuant to this subchapter;

(2) Brings an action or initiates a proceeding involving a violation of this subchapter;

(3) Testifies in an action authorized under this subchapter or a proceeding involving a violation of the provisions of this subchapter or any rule issued pursuant to this subchapter; or

(4) Assists in an investigation by providing information to a litigant in a civil action, the Mayor, or another agency in proceedings as provided by [this] subchapter.

(b)(1) A person who believes that an employer has discriminated in any manner or taken adverse action against the person in violation of this subchapter may submit to the Mayor a written complaint, signed by the complainant, that alleges the discrimination.

(2) Upon receipt of a complaint, the Mayor shall conduct an investigation.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 210, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Section references. — This section is referenced in § 32-1331.07.

Legislative history of Law 19-300. — See note to § 32-1331.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

§ 32-1331.11. Provisions relating to contracts with public bodies.

(a) Where, after investigation, the Mayor determines that an employer who is or has engaged in work on a project funded by District funds is in violation of this subchapter, the Mayor shall:

(1) Withhold from payment due to the employer an amount that is sufficient to:

(A) Pay restitution to each employee according to § 32-1331.09, including any applicable prevailing wages; and

(B) Pay any benefits, taxes, or other contributions that are required by law to be paid on behalf of the employee.

(2) Upon a final determination, the Mayor shall release the full amount of the withheld funds if no violation is found, or if a violation is found, the balance of the withheld funds after all obligations are satisfied pursuant to paragraph (1) of this subsection.

(b) An employer found to be in violation of this section more than twice in a 2-year period shall be subject to debarment. A debarment under this section shall be in effect against any successor corporation or business entity that:

(1) Has one or more of the same principals or officers as the employer against whom the debarment was imposed; and

(2) Is engaged in the same or equivalent trade or activity.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 211, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.12. Employer record-keeping requirements.

(a) An employer shall keep, for at least 3 years, in or about its place of business, records of the employer containing the following information:

(1) The name, address, occupation, and classification of each employee, exempt person, or independent contractor;

(2) The rate of pay of each employee or method of payment for the independent contractor or exempt person;

(3) The classification of each individual as an employee, exempt person, or an independent contractor;

(4) The amount that is paid each pay period to each employee, exempt person, or independent contractor;

(5) The hours that each employee, exempt person, or independent contractor works each day and each work week;

(6) For all individuals who are not classified as employees, evidence that each individual is an exempt person or an independent contractor or an employee thereof; and

(7) Other information that the Mayor requires, by regulation, as necessary to enforce this subchapter.

(b)(1) An employer shall provide each individual classified as an independent contractor or exempt person with written notice of such classification at the time the individual is hired.

(2) The written notice shall include:

(A) An explanation of the implications of the individual's classification as an independent contractor or exempt person rather than as an employee, in compliance with § 2-1933, and

(B) Contact information for the Mayor.

(3) Failure to provide a written notice shall be evidence of a knowing violation. The employer shall be liable for an administrative penalty of \$500 for each individual that the employer failed to notify.

(4) [Not funded].

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 212, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

Editor's notes. — Section 4 of D.C. Law 19-300 provided that D.C. Law 19-300, §§ 205,

206, and 212(e) [212(b)(4)] shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 32-1331.13. Further acts prohibited; penalty.

(a) A person who knowingly incorporates or forms, or assists in the incorporation or formation of, a corporation, partnership, limited liability company,

or other entity, or pays or collects a fee for use of a foreign or domestic corporation, partnership, limited liability corporation, or other entity for the purpose of facilitating, or evading detection of, a violation of this subchapter shall be subject to a civil penalty not less than \$5,000 and not to exceed \$20,000.

(b) A person who knowingly conspires with, aids and abets, assists, advises, or facilitates, an employer with the intent of violating this subchapter shall be subject to a civil penalty not less than \$5,000 and not to exceed \$20,000.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 213, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.14. Rules.

The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this subchapter. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 30-day review period, the proposed rules shall be deemed approved.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 214, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

§ 32-1331.15. Workplace Fraud Fund.

There is established as a nonlapsing fund the Workplace Fraud Fund ("Fund"). Each civil penalty collected pursuant to this subchapter shall be paid into the Fund to partially offset the administration, investigation, and other expenses incurred in implementing this subchapter. All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of the fiscal year, or at any other time, but shall be continually available for the administration of this subchapter without regard to fiscal year limitation, subject to authorization of Congress.

(Aug. 3, 1956, 70 Stat. 976, ch. 924, § 215, as added Apr. 27, 2013, D.C. Law 19-300, § 2(b), 60 DCR 2679.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-300 added this section.

Legislative history of Law 19-300. — See note to § 32-1331.01.

CHAPTER 15. WORKERS' COMPENSATION.

§ 32-1501. Definitions.

Section references. — This section is referenced in § 6-1405.01, § 32-1508, and § 32-1511.

CASE NOTES

Employees.

Former assistant principal failed to state a claim for which relief could be granted where she alleged wrongful discharge and retaliation claims pursuant to D.C. Code § 32-1542, because the Comprehensive Merit Personnel Act (CMPA), D.C. Code § 1-601.01 et seq., provides the exclusive remedy for a District of Columbia

public employee who has a work-related complaint of any kind and because D.C. Code § 32-1501(9)(B) excludes from the definition of “employee” those individuals subject to the CMPA. *Lewis v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

§ 32-1503. Coverage.

Section references. — This section is referenced in § 32-1504.

CASE NOTES

ANALYSIS

Applicability.

Exclusive remedy.

Applicability.

Employer was not liable to a mother in a wrongful death and survival action after an employee committed suicide using a gun provided by the employer because the employee's suicide was an intervening act that precluded the employer's liability under District of Columbia law, and the mother effectively admitted that the suicide was a willful and intentional act when the mother argued that the District of Columbia Workers' Compensation Act, D.C. Code § 32-1501 et seq., was inapplicable pursuant to D.C. Code § 32-1503(d); the mother was not entitled to have questions certified to the District of Columbia Court of Appeals pursuant to D.C. Code § 11-723(a) because certification based on the possibility

that the District of Columbia Court of Appeals might adopt additional exceptions to its general rule as to suicide had no logical stopping point. *Rollins v. Wackenhut Servs.*, — F.3d —, 2012 U.S. App. LEXIS 26549 (D.C. Cir. Dec. 28, 2012).

Exclusive remedy.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. *Lockhart v. Coastal Int'l Sec.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

§ 32-1504. Exclusiveness of liability and remedy.

Section references. — This section is referenced in § 32-1535.

CASE NOTES

ANALYSIS

Construction.
Emotional distress.

Construction.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress, and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. *Lockhart v. Coastal Int'l Sec.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

Emotional distress.

Employee's tort-related claims for negligence, intentional infliction of emotional distress, negligent infliction of emotional distress,

and negligent supervision, which were based on events that occurred while she was at work, were dismissed because the Workers' Compensation law provided the exclusive remedy for these claims, and it was not relevant to the exclusivity analysis that presentation of these claims before the D.C. Department of Employment Services was barred by the applicable statute of limitations. *Lockhart v. Coastal Int'l Sec.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 166330 (D.D.C. Nov. 21, 2012).

Former employee's claim that the employee suffered emotional distress from migraine headaches caused by odors from a defective sewer system which the employer refused to repair was preempted by the District of Columbia Worker's Compensation Act, D.C. Code § 32-1503 et seq., since the alleged injury arose from employment, was not intentional, and was incidental to employment. *Bilal-Edwards v. United Planning Org.*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 145619 (D.D.C. Oct. 10, 2012).

§ 32-1542. Retaliatory actions by employer prohibited.

CASE NOTES

Retaliatory actions.

Former assistant principal failed to state a claim for which relief could be granted where she alleged wrongful discharge and retaliation claims pursuant to D.C. Code § 32-1542, because the Comprehensive Merit Personnel Act,

D.C. Code § 1-601.01 et seq., provides the exclusive remedy for a District of Columbia public employee who has a work-related complaint of any kind. *Lewis v. District of Columbia*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 116065 (D.D.C. Aug. 17, 2012).

§ 34-706. Failure to perform duty or obey Commission order; violation of pipeline safety regulation.

Section references. — This section is referenced in § 34-731, § 34-732, and § 34-912.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a \$5,000 penalty

under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. *Wash. Gas Light Co. v. PSC of the Dist. of Columbia*, — A.3d —, 2013 D.C. App. LEXIS 51 (Feb. 28, 2013).

§ 34-711. Rights, penalties and forfeitures not released; penalties and forfeitures cumulative.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a \$5,000 penalty

under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, — A.3d —, 2013 D.C. App. LEXIS 51 (Feb. 28, 2013).

§ 34-905. Production of records of utilities; attendance of witnesses; duties of United States Attorney and D.C. Attorney General.

CASE NOTES

Penalty.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a \$5,000 penalty

under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, — A.3d —, 2013 D.C. App. LEXIS 51 (Feb. 28, 2013).

§ 34-907. Utilities to furnish information required by Commission; maps, books, reports to be delivered on request.

CASE NOTES

Authorized actions.

Given that a utility was found to have failed to obey an order made by the Public Service Commission and given that D.C. Code § 34-711 specifically contemplated cumulative penalties, the trial court's imposition of a \$5,000 penalty

under D.C. Code § 34-706(a) for the utility's violation of an order did not produce an absurd result or run afoul of the tenets of statutory construction. Wash. Gas Light Co. v. PSC of the Dist. of Columbia, — A.3d —, 2013 D.C. App. LEXIS 51 (Feb. 28, 2013).

CHAPTER 15. RETAIL ELECTRIC COMPETITION AND CONSUMER PROTECTION.

TITLE 36. TRADE PRACTICES.

Chapter

3. Retail Service Stations.

CHAPTER 3. RETAIL SERVICE STATIONS.

Subchapter I-A. Security at Retail Service Stations

Sec.

36-302.22. Retail service station security public service announcement. [Transferred].

Sec.

36-301.21. Security requirements for retail service stations.

36-301.22. Retail service station security public service announcement.

Subchapter II-A. Security at Retail Service Stations. [Transferred]

36-302.21. Security requirements for retail service stations. [Transferred].

Subchapter I-A. Security at Retail Service Stations.

§ 36-301.21. Security requirements for retail service stations.

(a) The operator of a retail service station shall install video surveillance equipment to monitor all pumps at the retail service station within 6 months after October 22, 2009. The Metropolitan Police Department shall review the surveillance video in the event of a crime committed at the station.

(b)(1) The operator of a retail service station shall display a warning sign at each pump and at the attendant's duty station that warns:

- (A) Always remove the keys from a vehicle;
- (B) Lock all doors when exiting a vehicle; and
- (C) Premises under surveillance.

(2) The measurements for each sign shall exceed 8 inches by 8 inches.

(3) The text for each sign shall be in boldface and shall exceed a 36-point font.

(4) The text and background for each sign shall be in contrasting colors.

(Apr. 19, 1977 D.C. Law 1-123, § 3-121, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606; Sept. 26, 2012, D.C. Law 19-171, § 27, 59 DCR 6190.)

Section references. — This section is referenced in § 36-302.21.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 redesignated subchapter II-A of this chapter as subchapter

I-A; and renumbered former § 36-302.21 as § 36-301.21.

Legislative history of Law 19-171. — Law 19-171, the "Technical Amendments Act of 2012," was introduced in Council and assigned

Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376

and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

§ 36-301.22. Retail service station security public service announcement.

Within 90 days after October 22, 2009, the Metropolitan Police Department shall produce a public service announcement video which will be available for broadcast on the cable television channels allocated to the District government and made accessible at the Metropolitan Police Department website warning consumers of the potential dangers at retail service stations.

(Apr. 19, 1977 D.C. Law 1-123, § 3-122, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606; Sept. 26, 2012, D.C. Law 19-171, § 27, 59 DCR 6190.)

Section references. — This section is referenced in § 36-302.22.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 redesignated subchapter II-A of this chapter as subchapter

I-A; and renumbered former § 36-302.22 as § 36-301.22.

Legislative history of Law 19-171. — See note to § 1-301.21.

Subchapter II-A. Security at Retail Service Stations. [Transferred].

§ 36-302.21. Security requirements for retail service stations. [Transferred].

Recodified as § 36-301.21.

(Apr. 19, 1977 D.C. Law 1-123, § 3-121, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606.)

§ 36-302.22. Retail service station security public service announcement. [Transferred].

Recodified as § 36-301.22.

(Apr. 19, 1977 D.C. Law 1-123, § 3-122, as added Oct. 22, 2009, D.C. Law 18-65, § 2, 56 DCR 6606.)

DIVISION VI. EDUCATION, LIBRARIES, AND PUBLIC INSTITUTIONS.

TITLE 38. EDUCATIONAL INSTITUTIONS.

SUBTITLE I. PUBLIC EDUCATION — PRIMARY AND SECONDARY.

Chapter

1B. Department of Education.

2A. Pre-Kindergarten Education System.

SUBTITLE IV. PUBLIC EDUCATION — CHARTER SCHOOLS.

20. Retirement of Public School Teachers.

SUBTITLE VIII. STATE LEVEL AGENCIES.

26A. State Board of Education.

SUBTITLE X. SCHOOL FUNDING.

29. Uniform Per Student Funding Formula.

SUBTITLE I. PUBLIC EDUCATION — PRIMARY AND SECONDARY.

CHAPTER 1B. DEPARTMENT OF EDUCATION.

Sec.

38-192.01. Adult literacy reporting.

§ 38-192.01. Adult literacy reporting.

(a) The Office of the Deputy Mayor for Education shall report to the Mayor and the Council, on an annual basis on or before the start of the third quarter of fiscal years 2012 through 2016, on the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District. The report shall:

(1) Cover the current and the preceding fiscal year;

(2) Identify the office's metrics used for measuring the need and demand for adult literacy support, state the office's quality standards, and measure the performance of District-funded providers of adult literacy services;

(3) Provide an accounting of the total number of adults needing literacy support in the District and by ward;

(4) Provide an accounting of the total number of District-funded providers of adult literacy support services that provide services to District residents, broken down by ward;

(5) Provide an accounting of the total number of openings available for literacy support services from District-funded service providers during the fiscal year reported, broken down by ward and by service provider;

(6) Provide a gap analysis that measures the capacity of District-funded service providers to meet the need and demand for adult literacy services in the District and by ward; and

(7) Propose an adult literacy plan for the next fiscal year to ensure that District-funded programs are meeting the needs of adult learners District-wide and by ward.

(b) To prepare for the adult literacy report, the Office of the Deputy Mayor for Education, shall seek information and support for the development of quality standards and performance measures from community-based providers of adult education and family literacy services, adult learners, funders, District and federal agencies, representatives from the business community, and adult education experts.

(June 12, 2007, D.C. Law 17-9, § 203a, as added Sept. 14, 2011, D.C. Law 19-21, § 4052, 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-171, § 92, 59 DCR 6190.)

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 clarified that D.C. Law 19-21, § 4052, added D.C. Law 17-9, § 203a.

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned

Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

CHAPTER 2. COMPULSORY SCHOOL ATTENDANCE AND EXPULSION.

Subchapter I. School Attendance.

§ 38-203. Enforcement; penalties.

Section references. — This section is referenced in § 38-2605.

Effect of amendments.

D.C. Law 19-141 added subsecs. (i)(A-i), (B-i), and (j).

Legislative history of Law 19-141. — For history of Law 19-141, see notes under § 38-201.

Editor's notes. — Section 601 of D.C. Law 19-141, as amended by D.C. Law 19-168, § 7004, provided that §§ 302(b)(1), 304, and 502(a) of the act shall apply upon the inclusion of their fiscal effect in an approved budget and financial plan.

CHAPTER 2A. PRE-KINDERGARTEN EDUCATION SYSTEM.

Subchapter I. Definitions; Administration; and Funding

Sec.

38-271.02. Administration of pre-k.

Sec.

38-271.01. Definitions.

Subchapter I. Definitions; Administration; and Funding.

§ 38-271.01. Definitions.

For the purposes of this chapter, the term:

(1) "Child-occupied facility" means a building, or portion of a building, which, as part of its function, receives children under 6 years of age on a regular basis and is required to obtain a certificate of occupancy as a precondition to performing that function. The term "child-occupied facility" includes a daycare center, nursery, preschool center, kindergarten classroom, child development center, child development home, child development facility, child-placing agency, infant care center, or similar entity. The location of a child-occupied facility as part of a larger structure does not make the entire structure a child-occupied facility. Only the portion of the facility occupied or regularly visited by children under 6 years of age shall be considered the child-occupied facility.

(1A) "Community-based organization" or "CBO" means a Head Start or early childhood education program operated by a nonprofit entity, faith-based organization, or other entity that participates in federally funded early childhood programs.

(1B) "Coordinating Council" means the State Early Childhood Development Coordinating Council established pursuant to § 38-271.07.

(1C) "DC Collaborative" means the collaborative of District of Columbia colleges and universities established pursuant to § 38-274.01(a)(3).

(1D) "Elementary and secondary education" means education from and including pre-k through the end of high school or their equivalent.

(2) Repealed.

(2A) "HEIG fund" means the Higher Education Incentive Grant Fund established by § 38-274.03.

(3) "HEI program" means the Higher Education Incentive grant program established pursuant to § 38-274.01.

(3A) "HEI scholarship program" means the scholarship program established pursuant to §§ 38-274.01 and 38-274.02.

(4) "HQ standards" means high-quality content standards and program requirements for pre-k programs established by the OSSE pursuant to § 38-272.01.

(5) "OSSE" means the Office of the State Superintendent of Education, established by Chapter 26 of this title [§ 38-2601 et seq.].

(6) "Pre-k" means the educational gradation available to children of pre-kindergarten age for the 2 years prior to their eligibility for enrollment in kindergarten.

(7) “Pre-k age” means children 3 or 4 years of age, and children who become 5 years of age after September 30th of the upcoming school year.

(8) “Pre-k-education services” means the District-wide educational services provided to the publicly funded CBOs, District of Columbia Public Schools, and Public Charter Schools who provide pre-k care and education services to pre-k age children.

(9) “Pre-k program” means a classroom or a group of classrooms serving pre-k children. A single organization or entity may operate multiple pre-k programs in different locations.

(10) “Professional development” means a data-driven, continuous improvement process that provides a range of formal and informal experiences designed for teaching and administrative staff to increase their knowledge and understanding of research-based, developmentally appropriate content and teaching strategies.

(11) “School readiness” means a child’s mastery of approved early-learning standards in the domains of language and literacy, mathematical thinking, social and emotional development, scientific inquiry, social studies, approaches to learning, and health.

(12) “Technical assistance” means the human and technological resources that support the establishment of age-appropriate classroom environments, provide strategies that develop children’s early language and literacy development and mathematical thinking, aid in the mastery of early-learning standards, and develop appropriate instructional strategies for children with disabilities and for children whose first language is not English.

(13) “Workforce development” means a range of educational and training experiences that support and increase the capacity of individuals to enter and remain a part of the early-care and education-labor market.

(July 18, 2008, D.C. Law 17-202, § 101, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(a), 57 DCR 11005; Sept. 14, 2011, D.C. Law 19-21, § 9061(a), 58 DCR 6226; Apr. 20, 2013, D.C. Law 19-262, § 303(a), 60 DCR 1300.)

Section references. — This section is referenced in § 2-1595, § 7-2031, § 38-1802.14, and § 38-2602.

Effect of amendments.

The 2013 amendment by D.C. Law 19-262 added (1); and redesignated former (1), (1A), (1B), and (1C) as present (1A), (1B), (1C), and (1D), respectively.

Legislative history of Law 19-262. — Law

19-262, the “Sustainable DC Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

§ 38-271.02. Administration of pre-k.

(a) The OSSE shall oversee CBO pre-k education services, including:

- (1) All programs, including curricula;
- (2) All related state and federal early childhood programs;
- (3) Any licensure requirements;
- (4) Fiscal matters;
- (5) Funding to:

(A) Maximize the use of federal funds and other resources;
 (B) Minimize inefficiencies and programmatic barriers;
 (C) Ensure that children are placed on the appropriate funding streams; and

(D) Ensure that funds authorized by this chapter are used to supplement, not supplant, other funding sources that finance education programs for children of pre-k age;

(6) The alignment and monitoring of standards and teaching practices between pre-k and grades kindergarten through 3rd grade; and

(7) The implementation of an external evaluation of all pre-k programs, including the measurement of progress toward school-readiness benchmarks.

(b) The OSSE shall:

(1) Coordinate with the Interagency Collaboration and Services Integration Commission, established by § 2-1594, to ensure that eligible families can access coordinated support services for their children of pre-k age;

(2) In regard to pre-k programs in public schools and public charter schools, consult with local education agencies and the Public Charter School Board, established by § 38-1802.14, to ensure that the goals of this chapter are met;

(3) Establish facilities requirements for classroom expansion and quality improvement, to be utilized by the Office of Public Education Facilities Modernization, established by § 38-451 [repealed], to complete the capital improvements and renovation of facilities;

(4) Develop high-quality content standards for all pre-k programs, which have been approved by the State Board of Education;

(5) Develop and oversee a monitoring, assessment, and accountability process for all programs within the pre-k-education system;

(6) Promulgate a process for pre-k programs that fail to attain the required high-quality standards by September 1, 2014, which may include:

(A) A reduction or elimination of local funding;

(B) Denial of licensure; or

(C) Revocation of licensure;

(7) Promulgate a quality-improvement process for pre-k programs that, after 2014, fail to maintain for a period of time, as determined by OSSE, the required high-quality standards, which may include:

(A) Adherence to a quality-improvement plan;

(B) A reduction or an elimination of local funding;

(C) Denial of licensure; or

(D) Revocation of licensure;

(8) Develop and administer the technical assistance program across all pre-k education services.

(9) Collect and disseminate to the public on an ongoing basis child and program data; and

(10) Consider developing a sliding-fee scale for enrollment in pre-k of children whose family income is above 250% of the federal poverty guideline.

(c) The OSSE shall not issue a license for a child-occupied facility located within 200 feet of a dry cleaning facility that uses perchloroethylene or

n-propyl bromide as a cleaning agent for clothes or other fabrics. The 200-foot restriction shall not apply at a location where a child-occupied facility is applying for renewal of an existing license.

(July 18, 2008, D.C. Law 17-202, § 102, 55 DCR 6297; Mar. 8, 2011, D.C. Law 18-285, § 2(b), 57 DCR 11005; Apr. 20, 2013, D.C. Law 19-262, § 303(b), 60 DCR 1300.)

Section references. — This section is referenced in § 38-271.06, § 38-273.01, and § 38-2602.

Effect of amendments.

The 2013 amendment by D.C. Law 19-262 added (c).

Legislative history of Law 19-262. — See note to § 38-271.01.

CHAPTER 3A. OMBUDSMAN FOR PUBLIC EDUCATION.

§ 38-351. Office of Ombudsman; establishment; term.

Section references. — This section is referenced in § 38-1802.04.

Editor's notes.

Section 3(a) of D.C. Law 19-284 rewrote the section; and added “for Public Education” to the section heading.

Applicability of D.C. Law 19-284: Section 5 of

D.C. Law 19-284 provided that section 3 of the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 38-353. Duties.

Section references. — This section is referenced in § 38-191.

Editor's notes. — Section 3(b) of D.C. Law 19-284 rewrote (12); in the introductory language of (15), substituted “45 days” for “90 days”; and substituted “Deputy Mayor for Education, the Council, the State Board of Education a report, which shall be posted on their websites,” for “Deputy Mayor for Education a report”.

Applicability of D.C. Law 19-284: Section 5 of D.C. Law 19-284 provided that section 3 of the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 38-354. Authority.

Editor's notes. — Section 3(c) of D.C. Law 19-284 added a new paragraph (5A) to read as follows: “(5A) Bring persons together to resolve conflicts that are not in formal legal or administrative proceedings”.

Applicability of D.C. Law 19-284: Section 5 of D.C. Law 19-284 provided that section 3 of the

act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 38-355. Limitations; protections.

Editor's notes. — Section 3(d) of D.C. Law 19-284 added a new paragraph (4A) to read as

follows: “(4A) Examine or investigate any matter that would be under the jurisdiction of the

Office of the Inspector General or the Office of District of Columbia Auditor”.

Applicability of D.C. Law 19-284: Section 5 of D.C. Law 19-284 provided that section 3 of the act shall apply upon the inclusion of its fiscal

effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

SUBTITLE IV. PUBLIC EDUCATION — CHARTER SCHOOLS.

CHAPTER 18. DISTRICT OF COLUMBIA SCHOOL REFORM (PUBLIC CHARTER SCHOOLS).

Subchapter II. Public Charter Schools.

§ 38-1802.13. Charter revocation.

Section references. — This section is referenced in § 38-1800.02, § 38-1802.01, § 38-

1802.12, § 38-1802.14, § 38-1804.01, § 38-2901, and § 38-2906.02.

CASE NOTES

Revocation held proper.

Decision affirming the revocation of a charter school's charter pursuant to D.C. Code § 38-1802.13 was proper, as the Public Charter School Board set forth a chart of standardized test scores over the past eight years that dem-

onstrated both low rankings on reading and math proficiency and the absence of any consistent significant improvement. *Kamit Inst. for Magnificent Achievers v. District of Columbia Pub. Charter Sch. Bd.*, 55 A.3d 894, 2012 D.C. App. LEXIS 522 (2012).

CHAPTER 20. RETIREMENT OF PUBLIC SCHOOL TEACHERS.

Subchapter II. Retirement After June 30, 1946

Part A

General

Sec.

- 38-2021.01. Salary deductions; deposit.
- 38-2021.03. Voluntary and involuntary retirement.
- 38-2021.04. Disability retirement.
- 38-2021.05. Computation of annuity; options.
- 38-2021.07a. Required minimum distributions.
- 38-2021.08. Basis for determining annuity amount.
- 38-2021.09. Deferred annuity; annuity to survivors.

Sec.

- 38-2021.13. Definitions.
- 38-2021.14. Records and accounts; report to Congress. [Repealed].
- 38-2021.15a. Disposition of forfeitures.
- 38-2021.17. Funds not assignable or subject to execution.
- 38-2021.18. Applicability.
- 38-2021.24. Rollovers; purchase of service credit. [Transferred].
- 38-2021.25. Internal Revenue Code limits. [Transferred].
- 38-2021.26. Rollovers; purchase of service credit.
- 38-2021.27. Internal Revenue Code limits.

Subchapter II. Retirement After June 30, 1946.

PART A.

GENERAL.

§ 38-2021.01. Salary deductions; deposit.

(a) Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7% of the teacher's annual salary; except that in the case of teachers hired on or after the first day of the first pay period that begins after October 29, 1996, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 8% of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4% per annum, compounded annually up to July 1, 1946, and thereafter at 3% per annum, compounded annually from December 31st of the year in which the deductions are made; provided, that such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed 5 years of eligible service interest shall be credited to the date of separation or the end of the 90-day period beginning on November 17, 1979, whichever is earlier. These individual interest-bearing accounts shall be kept by the Custodian of Retirement Funds. After the end of the 90-day period beginning on November 17, 1979, any amounts deducted and withheld pursuant to this subsection shall be paid to the Custodian of Retirement Funds (as defined in § 1-702(6)) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(b) Repealed.

(c) Amounts deducted and withheld from the annual salary of each teacher shall be:

(1) Picked up by the public schools of the District of Columbia, as described in section 414(h)(2) of the Internal Revenue Code;

(2) Deducted and withheld from the annual salary of the teachers as salary reduction contributions;

(3) Paid by the public schools of the District of Columbia to the Custodian of Retirement Funds, as defined in § 1-702(6); and

(4) Made a part of the teacher's annuity benefit.

(d) Notwithstanding any provisions of this part to the contrary, the amounts contributed under this section shall be fully (100%) vested.

(e) Notwithstanding any provisions of this part to the contrary, upon the employer's request, a contribution that was made by a mistake of fact shall be

returned to the employer by the trustee within one year after the payment of the contribution. A portion of a contribution returned pursuant to this section shall be adjusted to reflect earnings or gains. Notwithstanding any provisions of this part to the contrary, the right or claim of a participant or beneficiary to an asset of the trust or a benefit under this part shall be subject to and limited by the provisions of this subsection.

(Aug. 7, 1946, 60 Stat. 875, ch. 779, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 1; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 21; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(1); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(d)(1); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(A), 253(a)(1); Mar. 24, 1990, D.C. Law 8-97, § 4, 37 DCR 1046; Apr. 9, 1997, D.C. Law 11-218, § 4(a), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 55(a), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 60, 53 DCR 6794; May 1, 2013, D.C. Law 19-312, § 2(a), 60 DCR 3434.)

Section references. — This section is referenced in § 1-713, § 38-2021.04, § 38-2021.08, § 38-2023.14, and § 38-2041.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312 deleted “purchase of annuity” from the section heading; repealed (b), relating to the purchase of annuities; and added (c), (d), and (e).

Emergency legislation.

Section 2(a)(1) of D.C. Law 19-313 amended the heading by striking the phrase “; purchase of annuity”. Section 2(a)(2) of D.C. Law 19-313 repealed subsection (b).

Section 2(a)(3) of D.C. Law 19-313 added new subsections (c), (d), and (e) to read as follows:

“(c) Amounts deducted and withheld from the annual salary of each teacher shall be:

“(1) Picked up by the public schools of the District of Columbia, as described in section 414(h)(2) of the Internal Revenue Code;

“(2) Deducted and withheld from the annual salary of the teachers as salary reduction contributions;

“(3) Paid by the public schools of the District of Columbia to the Custodian of Retirement Funds, as defined in section 102(6) of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-702(6)); and

“(4) Made a part of the teacher’s annuity benefit.

“(d) Notwithstanding any provisions of this act to the contrary, the amounts contributed under this section shall be fully (100%) vested.

“(e) Notwithstanding any provisions of this act to the contrary, upon the employer’s request, a contribution that was made by a mistake of fact shall be returned to the employer by the trustee within one year after the payment of the contribution. A portion of a contribution returned pursuant to this section shall be adjusted to reflect earnings or gains. Notwithstanding any provisions of this act to the contrary, the right or claim of a participant or beneficiary to an asset of the trust or a benefit under this act shall be subject to and limited by the provisions of this subsection.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312 — Law 19-312, the “Retirement of Public-School Teachers Omnibus Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1017. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 15, 2013, it was assigned Act No. 19-680 and transmitted to Congress for its review. D.C. Law 19-312 became effective on May 1, 2013.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.03. Voluntary and involuntary retirement.

(a) Any teacher who completes 5 years of eligible service and who is separated from the service: (1) after becoming 55 years of age and completing 30 years of service; (2) after becoming 60 years of age and completing 20 years of service; (3) after becoming 62 years of age; or (4) in the case of any teacher hired on or after the first day of the first pay period which begins after October 29, 1996, after completing 30 years of service; is entitled to an annuity.

(b) Any teacher who completes 5 years of eligible service and who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after: (1) completing 25 years of service; or (2) becoming 50 years of age and completing 20 years of service; is entitled to an annuity reduced by one sixth of 1% for each full month such teacher is under the age of 55 years at the date of his separation from the service.

(c) Repealed.

(c-1) A teacher who completes 5 years of eligible service shall be 100% vested.

(d)(1) The length of a teacher's service shall be computed in accordance with § 38-2021.08.

(2) The amount of an annuity authorized by this section shall be computed in accordance with § 38-2021.05.

(3) Each annuity authorized by this section shall commence on the day after the teacher is separated from the service and shall terminate on the date the teacher dies.

(e) Any teacher who completes 5 years of vested service may voluntarily retire from the service on or before December 31, 1980, after completing 20 years of service and shall be entitled to an annuity computed in accordance with subsection (b) of this section; provided, that the amortization payment to the District of Columbia Retirement Board for the District of Columbia Teachers' Retirement Fund shall be made from appropriations of the Board of Education; except that any teacher hired on or after the first day of the first pay period which begins after October 29, 1996, who completes 30 years of service shall be entitled to an annuity computed in accordance with § 38-2021.05.

(f)(1) In the event of a major reorganization, a major reduction in force, or a major transfer of functions in which a significant percentage of Board of Education employees will be separated or subject to an immediate reduction in the rate of basic pay or a furlough, the Board of Education is authorized to offer voluntary retirement to the following eligible teachers:

(A) Teachers who have completed 25 years of service; and

(B) Teachers who have reached 50 years of age and completed 20 years of service.

(2) Teachers who accept voluntary retirement under paragraph (1) of this subsection shall:

(A) Receive an annuity reduced by $\frac{1}{6}$ of 1% for each full month such teacher is under the age of 55 years at the date of his or her separation from the service; and

(B) Be eligible for the early out retirement incentive program established by § 38-2021.03.

(Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(2); Mar. 4, 1981, D.C. Law 3-128, § 9, 28 DCR 246; Mar. 5, 1981, D.C. Law 3-133, § 5, 27 DCR 4417; May 21, 1988, D.C. Law 7-111, § 2, 35 DCR 2674; Sept. 26, 1995, D.C. Law 11-52, § 902, 42 DCR 3684; Apr. 9, 1997, D.C.

Law 11-218, § 4(b), 43 DCR 6172; May 1, 2013, D.C. Law 19-312, § 2(b), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.04, § 38-2021.05, and § 38-2021.09.

Effect of amendments. — The 2013 amendment by D.C. Law 19-312 added (c-1).

Temporary Amendment of Section. — Section 2(b) of D.C. Law 19-313 added a new subsection (c-1) to read as follows:

“(c-1) A teacher who completes 5 years of eligible service shall be 100% vested.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.04. Disability retirement.

(a) Any teacher who completes 5 years of eligible service, and who, before becoming eligible for retirement under the conditions defined in §§ 38-2021.01 to 38-2021.03, acquires a physical or mental disability and is incapable of satisfactorily performing the duties of his position by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of §§ 38-2021.05 and 38-2021.06 and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than 5 years next prior to having a disability for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within 6 months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of the Department of Human Services of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

(b) Every annuitant retired under the provisions of this section, unless the disability for which retired be permanent in character, shall at the expiration of one year from the date of such retirement and annually thereafter, until reaching retirement age as defined in § 38-2021.03, be examined under the direction of the Director of the Department of Human Services of the District of Columbia in order to ascertain the nature and degree of the annuitant's disability, if any. If an annuitant shall recover before reaching retirement age he shall be reappointed by the Board of Education in accordance with such rules and regulations as the said Board may prescribe to the first position, equal or similar to any position in the public schools occupied by the annuitant before retirement, which becomes vacant after the date the Board of Education receives written notification from the Director of the Department of Human Services of the District of Columbia that the annuitant has recovered and is able to discharge his duties as a teacher in the public schools of the District of Columbia. Payment of the annuity shall be continued until the date of

reappointment by the Board of Education. In the event that the annuitant refuses to accept the employment prescribed in this section no annuity shall be paid after the date of such refusal. Should the annuitant fail to appear for examination as required under this section, payment of the annuity shall be suspended until continuance of the disability shall have been satisfactorily established. Upon written recommendation of the Superintendent of Schools, the Board of Education may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the nature and degree of disability of any teacher retired on an annuity under this section.

(b-1) Any initiation, termination, or change of annuity payments made under subsection (b) of this section shall be subject to review and final determination by the District of Columbia Retirement Board.

(c) Notwithstanding the foregoing provisions of this section, if during any calendar year an annuitant who is receiving a disability annuity under this section and who has not reached retirement age (as defined in § 38-2021.03) receives income from wages or self-employment, or both, in an amount not less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, the annuity of such annuitant shall be terminated by the District of Columbia Retirement Board effective January 1st of the first calendar year after such calendar year, except that this sentence shall not apply with respect to income received during the year in which the annuitant retired. The annuity of any annuitant whose annuity is terminated under the preceding sentence shall be restored, at the rate which would have been in effect but for such termination, effective January 1st of any year following a year during which the amount of such annuitant's income from wages and self-employment is less than 80% of the current rate of pay of the position occupied by the annuitant before retirement, or effective immediately if the District of Columbia Retirement Board determines that, outside of normal fluctuations in such annuitant's income, such annuitant's income is reduced to a level which on an annual basis is less than 80% of such current rate of pay.

(d) In cases where the annuity is discontinued under the provisions of this section, as much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against the teacher's individual account and, unless the teacher shall become reemployed in a position covered under the Teachers' Retirement Program established pursuant to the Chapter 9 of Title 1 [§ 1-901.01 et seq.], the teacher shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits set forth in § 38-2021.09.

(Aug. 7, 1946, 60 Stat. 877, ch. 779, § 4; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 3; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 747, Pub. L. 90-231, § 1(3); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 256; Apr. 13, 2005, D.C. Law 15-354, § 55(b), 52 DCR 2638; Apr. 24, 2007, D.C. Law 16-305, § 56, 53 DCR 6198; May 1, 2013, D.C. Law 19-312, § 2(c), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.05, § 38-2021.06, § 38-2021.09, § 38-2021.27, and § 38-2023.11.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312 rewrote (d).

Temporary Amendment of Section. — Section 2(c) of D.C. Law 19-313 amended (d) to read as follows:

“(d) In cases where the annuity is discontinued under the provisions of this section, as much of the annuity payments as would have been provided by an annuity whose actuarial value at the time of retirement was equal to the contributions accumulated with interest shall be charged against the teacher’s individual

account and, unless the teacher shall become reemployed in a position covered under the Teachers’ Retirement Program established pursuant to the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998, effective September 18, 1998 (D.C. Law 12-152; D.C. Official Code § 1-901.01 et seq.), the teacher shall be considered as having been separated from the service for other than retirement purposes and entitled to the benefits set forth in section 9.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.05. Computation of annuity; options.

(a) Except as otherwise provided in this part, every teacher who shall be retired under the provisions of § 38-2021.03 or § 38-2021.04 shall receive an annuity composed of: (1) the larger of: (A) one and one-half per centum of the average salary as defined in § 38-2021.13, multiplied by so much of the total service as does not exceed 5 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as does not exceed 5 years; plus (2) the larger of: (A) one and three-quarters per centum of the average salary multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 5 years but does not exceed 10 years; plus (3) the larger of: (A) two per centum of the average salary multiplied by so much of the total service as exceeds 10 years; or (B) one per centum of the average salary, plus \$25, multiplied by so much of the total service as exceeds 10 years. Notwithstanding the preceding sentence, every teacher retired under the provisions of § 38-2021.03 or § 38-2021.05 who is hired on or after the first day of the first pay period that begins after October 29, 1996 shall receive an annuity equal to 2% of the average salary as defined in § 38-2021.13 multiplied by the number of years of the teacher’s creditable service. Each annuity is stated as an annual amount, one twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in § 38-2021.03 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under § 38-2021.04.

(b) Any teacher retiring under the provisions of § 38-2021.03 or § 38-2021.04 may, at the time of retirement, elect to receive in lieu of the life annuity described herein 1 of the following:

(1) A reduced annuity and an annuity after death payable to the surviving spouse or domestic partner of such teacher. The life annuity of a teacher making such election, or any portion of such annuity designated by the teacher in writing for such purposes at the time of retirement, shall be reduced by 2½%

of so much thereof as does not exceed \$3,600 and by 10% of so much thereof as exceeds \$3,600. The spouse or domestic partner of a teacher making such election shall be entitled to an annuity equal to 55% of such life annuity, or designated portion thereof, except that if a retired teacher who has elected a reduced annuity as provided in this paragraph or in subsection (d) of this section dies and is survived by a spouse or domestic partner whom he or she married or entered into a domestic partnership with after retirement, such spouse or domestic partner is entitled to an annuity in an amount which would have been paid had the teacher been married to, or in a domestic partnership with, the spouse or domestic partner at the time of retirement, but only if: (A) such spouse or domestic partner was married to, or in a domestic partnership with, such individual for at least 2 years immediately preceding the teacher's death, or is the mother or father of issue of such marriage or domestic partnership; and (B) such spouse or domestic partner elects this annuity instead of any other survivor benefit to which he or she may be entitled under this part or another retirement system for employees of the federal or District government. The annuity of a spouse or domestic partner entitled to an annuity under this paragraph shall begin on the day after the retiree dies. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the spouse or domestic partner dies; or (B) the spouse or domestic partner remarries or enters into a domestic partnership before becoming 55 years of age. In the case of a surviving spouse or domestic partner whose annuity under this paragraph is terminated because of remarriage or entry into a domestic partnership before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, or the day the domestic partnership is terminated in accordance with § 32-702(d), if:

(i) The surviving spouse or domestic partner elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving spouse or domestic partner may be entitled, under this part or another retirement system for employees of the federal or District government, by reason of the remarriage or entry into a domestic partnership; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6) for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If unmarried, not in a domestic partnership, and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the District of Columbia Retirement Board at the time of retirement, during the life of such survivor annuitant equal to 55% of such reduced annuity. The annuity of the survivor annuitant shall commence on the day after the retired teacher dies, and such annuity and any right thereto shall terminate on the last day of the month before the death of the survivor annuitant. The annuity hereunder payable to the teacher shall be 90% of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than 5 years younger than the annuitant; 85% if the survivor annuitant is 5 but less than 10 years younger;

80% if the survivor annuitant is 10 but less than 15 years younger; 75% if the survivor annuitant is 15 but less than 20 years younger; 70% if the survivor annuitant is 20 but less than 25 years younger; and 60% if the survivor annuitant is 25 or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of the Department of Human Services of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of § 38-2021.09 based upon the service of the same teacher covering the same period of time.

(3) A reduced annuity of equivalent value providing for a life-insurance benefit payable in a lump sum at the time of the annuitant's death. The face amount of such life insurance may be in any amount which the retiring teacher shall designate at the time of retirement but shall not exceed his contributions accumulated with interest to the date of retirement. Payment of such insurance shall be made in accordance with the provisions of § 38-2021.10. Any annuitant who elects to receive the reduced annuity with fixed life-insurance benefits may reconvert the value of the life insurance to an additional annuity of equivalent value on any anniversary of the retirement date of said annuitant prior to reaching age 70.

(4) In the event an individual designated as a surviving spouse or domestic partner or as a survivor annuitant under this subsection predeceases the teacher designating such individual, the annuity of such teacher shall, effective the day after the death of such individual, be the amount it would have been if no such beneficiary had been named.

(c)(1)(A) The annuity of any person who now or hereafter is receiving or entitled to receive an annuity from the Teachers' Retirement and Annuity Fund shall be increased, effective on October 1, 1955, or on the commencing date of the annuity, whichever is later, in accordance with the following schedule:

If annuity commences between	Annuity not in excess of \$1,500 shall be increased by	Annuity in excess of \$1,500 shall be increased by
August 20, 1920, and June 30, 1955	12 per centum ..	8 per centum
July 1, 1955, and December 31, 1955 ..	10 per centum ..	7 per centum
January 1, 1956, and June 30, 1956	8 per centum ...	6 per centum
July 1, 1956, and December 31, 1956 ..	6 per centum ...	4 per centum
January 1, 1957, and June 30, 1957	4 per centum ...	2 per centum
July 1, 1957, and December 31, 1957 ..	2 per centum ...	1 per centum

(B) Such increase in annuity shall not exceed the sum necessary to increase such annuity, exclusive of annuity purchased by voluntary contributions under this section, to \$4,104. The monthly installment of each annuity so increased shall be fixed at the nearest dollar.

(2) The increases provided by this subsection, when added to the annuities of retired employees, shall not operate to increase the annuities of their

survivors, except that the annuity of any such survivor who becomes entitled to annuity shall be increased by the per centum provided in paragraph (1) of this subsection appropriate to the commencing date of such survivors annuity.

(d) A teacher who is unmarried and not in a domestic partnership at the time of retiring under a provision of law which permits election of a reduced annuity with a survivor annuity payable to his spouse or domestic partner and who later marries or enters into a domestic partnership may irrevocably elect, in a signed writing filed with the District of Columbia Retirement Board within one year after he or she marries or enters into a domestic partnership, a reduction in his or her current annuity and an annuity after death payable to his or her surviving spouse or domestic partner as provided in paragraph (1) of subsection (b) of this section. The reduced annuity is effective the first day of the month after such election is received by the District of Columbia Retirement Board. The election voids prospectively any election previously made under paragraph (2) or paragraph (3) of subsection (b) of this section.

(e)(1) Notwithstanding any other provision of this part, other than this subsection, the monthly rate of annuity payable under this section shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.].

(2) Notwithstanding any other provisions of this part, other than this subsection, the monthly rate of annuity payable under this section to a surviving child shall not be less than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.], or 3 times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

(3) The provisions of this subsection shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States, or the District of Columbia, an annuity or retired pay under any other civilian or military retirement system, benefits under title II of the Social Security Act [42 U.S.C. § 401 et seq.], a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost-of-living increase added to that amount, authorized to be paid from time to time under title II of the Social Security Act [42 U.S.C. § 401 et seq.].

(4) An annuity payable from the Teachers' Retirement and Annuity Fund to a former teacher, which is based on a separation occurring prior to October 20, 1969, is increased by \$240.

(5) In lieu of any increase based on an increase under paragraph (4) of this subsection, an annuity payable from the Teachers' Retirement and Annuity Fund to the surviving spouse of a teacher or annuitant, which is based on a separation occurring prior to October 20, 1969, shall be increased by \$132.

(6) The monthly rate of an annuity resulting from an increase under paragraph (4) or (5) of this subsection shall be considered as the monthly rate of annuity payable under subsection (a) of this section for purposes of computing the minimum annuity under this subsection.

(f) Each year, the District of Columbia Retirement Board shall set the applicable interest rate, mortality table, and cost-of-living factor to be used in the determination of actuarial equivalents or for other pertinent benefit calculations under the provisions of this part.

(Aug. 7, 1946, 60 Stat. 878, ch. 779, § 5; Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 4; Aug. 5, 1955, 69 Stat. 530, ch. 569, title V, § 23; July 2, 1956, 70 Stat. 487, ch. 497, § 1; June 4, 1957, 71 Stat. 46, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(a); Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(4); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(f); Oct. 21, 1972, 86 Stat. 1012, Pub. L. 92-518, title II, § 201(1), (2); Sept. 3, 1974, 88 Stat. 1050, Pub. L. 93-407, title III, § 301; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(c), 255(a); Apr. 9, 1997, D.C. Law 11-218, § 4(c), 43 DCR 6172; Apr. 13, 2005, D.C. Law 15-354, § 55(c), 52 DCR 2638; Sept. 12, 2008, D.C. Law 17-231, § 32(a), 55 DCR 6758; May 1, 2013, D.C. Law 19-301, § 3(a), 60 DCR 2310; May 1, 2013, D.C. Law 19-312, § 2(d), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.03, § 38-2021.04, § 38-2021.06, § 38-2021.08, § 38-2021.09, § 38-2021.19, and § 38-2023.12.

Effect of amendments.

The 2013 amendment by D.C. Law 19-301, in (b)(1), substituted “(B) such spouse or domestic partner elects” for “(B) such spouse or domestic partnership elects” and twice substituted “55 years” for “60 years”.

The 2013 amendment by D.C. Law 19-312 added (f).

Temporary Amendment of Section. — Section 2(d) of D.C. Law 19-313 added a new subsection (f) to read as follows:

“(f) Each year, the District of Columbia Retirement Board shall set the applicable interest rate, mortality table, and cost-of-living factor to

be used in the determination of actuarial equivalents or for other pertinent benefit calculations under the provisions of this act.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-301. — Law 19-301, the “Equity in Survivor Benefits Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-570. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-650 and transmitted to Congress for its review. D.C. Law 19-301 became effective on May 1, 2013.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.07a. Required minimum distributions.

(a) Distributions shall begin no later than the teacher’s required beginning date, as defined in section 401(a)(9) of the Internal Revenue Code, and shall be made in accordance with all other requirements of section 401(a)(9) of the Internal Revenue Code. The provisions of this section shall apply for the purposes of determining minimum required distributions under section 401(a)(9) of the Internal Revenue Code and take precedence over any inconsistent provisions of this part; provided, that these provisions are intended solely to reflect the requirements of section 401(a)(9) of the Internal Revenue Code and accompanying Treasury regulations and are not intended to provide or expand, and shall not be construed as providing or expanding, a benefit or distribution option not otherwise expressly provided for under the terms of this part. The provisions of this section shall apply only to the extent required under section 401(a)(9) of the Internal Revenue Code as applied to a governmental plan, and if any special rules for governmental plans are not set forth

in this section, these special rules are incorporated by reference and shall for all purposes be deemed a part of this part.

(b)(1) The teacher's entire interest shall be distributed, or begin to be distributed, to the teacher no later than April 1 following the later of the calendar year in which the teacher attains age 70½ or the calendar year in which the teacher retires or terminates employment (the "required beginning date").

(2) If the teacher dies before distributions begin, the teacher's entire interest shall be distributed, or shall begin to be distributed, no later than as follows:

(A) If the teacher's surviving spouse is the sole designated beneficiary, distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the teacher died, or by December 31 of the calendar year in which the teacher would have attained age 70½, if later;

(B) If the teacher's surviving spouse is not the sole designated beneficiary, distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the teacher died;

(C) If there is no designated beneficiary as of September 30 of the year following the year of the teacher's death, the teacher's entire interest shall be distributed by December 31 of the calendar year of the 5th anniversary of the teacher's death;

(D) If the teacher's surviving spouse is the sole designated beneficiary and the surviving spouse dies after the teacher but before distributions to the surviving spouse begin, subparagraph (A) of this paragraph shall not apply, and subparagraphs (B) and (C) of this paragraph shall apply as if the surviving spouse were the teacher. For the purposes of this paragraph and subsection (d) of this section, distributions are considered to begin on the teacher's required beginning date or, if this subparagraph applies, the date distributions to the surviving spouse are required to begin under subparagraph (A) of this paragraph. If annuity payments to the teacher irrevocably commence before the teacher's required beginning date or to the teacher's surviving spouse before the date distributions to the surviving spouse are required to begin under subparagraph (A) of this paragraph, the date distributions are considered to begin is the date distributions actually commence.

(3) Unless the teacher's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution, calendar year distributions shall be made in accordance with subsections (c) and (d) of this section. If the teacher's interest is distributed in the form of an annuity purchased from an insurance company, distributions under the annuity shall be made in accordance with the requirements of section 401(a)(9) of the Internal Revenue Code and applicable Treasury regulations. A part of the teacher's interest that is in the form of an individual account described in section 414(k) of the Internal Revenue Code shall be distributed in a manner satisfying the requirements of section 401(a)(9) of the Internal Revenue Code and the Treasury regulations that apply to individual accounts.

(c)(1) The amount of the annuity is to be determined each year.

(2) If the teacher's interest is paid in the form of annuity distributions, payments under the annuity shall satisfy the following requirements:

(A) The annuity distributions shall be paid in periodic payments made at intervals not longer than one year;

(B) Payments shall either be non-increasing or increase only as follows:

(i) By an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index based on prices of all items (the CPI-W) and issued by the Bureau of Labor Statistics;

(ii) To provide cash refunds of employee contributions upon the teacher's death;

(iii) To pay increased benefits that result from an amendment to this part.

(3) The amount that must be distributed on or before the teacher's required beginning date or, if the teacher dies before distributions begin, the date distributions are required to begin under subsection (b)(2)(A) or (B) of this section, is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received (for example, bi-monthly, monthly, semi-annually, or annually). The teacher's benefit accruals as of the last day of the first distribution calendar year shall be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the teacher's required beginning date.

(4) Additional benefits accruing to the teacher in a calendar year after the first distribution calendar year shall be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which the amount accrues.

(d) Amounts payable if a teacher dies before distribution begins are subject to the following requirements:

(1) If the teacher dies before the date of distribution of his or her interest begins and there is a designated beneficiary, the teacher's entire interest shall be distributed, beginning no later than the time described in subsection (b)(2)(A) or (B) of this section, over the life of the designated beneficiary not exceeding either of the following:

(A) Unless the benefit commenced is before the first distribution calendar year, the life expectancy of the designated beneficiary, determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the teacher's death; or

(B) If the benefit commenced before the first distribution calendar year, the life expectancy of the designated beneficiary, determined using the beneficiary's age as of his or her birthday in the calendar year that begins before benefits commence;

(2) If the teacher dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the teacher's death, distribution of the teacher's entire interest shall be completed by December 31 of the calendar year containing the 5th anniversary of the teacher's death; or

(3) If the teacher dies before the date distribution of the teacher's interest begins, the teacher's surviving spouse is the teacher's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this subsection shall apply as if the surviving spouse were the teacher, except that the time by which distributions must begin shall be determined without regard to subsection (b)(2)(A) of this section.

(Aug. 7, 1946, 60 Stat. 875, ch. 779, Pub. L. 79-624, § 7a, as added May 1, 2013, D.C. Law 19-312, § 2(e), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.27.

Effect of amendments. — The 2013 amendment by D.C. Law 19-312 added this section.

Temporary Addition of Section. — Section 2(e) of D.C. Law 19-313 added this section.

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.08. Basis for determining annuity amount.

(a) The years of service which form the basis for determining the amount of the annuity provided in § 38-2021.05(a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay as does not exceed 6 months in the aggregate in a fiscal year, plus service credit that may be allowed under the provisions of this section. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been on a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of 5 U.S.C. Chapter 81, or any earlier statute on which the subchapter is based. In computing an annuity under § 38-2021.05(a), the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for:

(1) Public school service or its equivalent outside the District of Columbia but not to exceed 10 years;

(2) Continuous temporary service in the public schools of the District immediately before probationary appointment;

(3) Service in the District government or the government of the United States allowable under subchapter III of 5 U.S.C. § 83;

(4) Periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) before the date of the separation upon which title to annuity is based; provided, that if a teacher is awarded retired pay on account of military service, the teacher's military service shall not be included unless the retired pay is awarded on account of a service-connected disability:

(A) Incurred in combat with an enemy of the United States; or

(B) Caused by an instrumentality of war and incurred in the line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part 1, paragraph 1, or is awarded under 10 U.S.C. § 12736;

(5) Educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-612.01, 1-612.02, and 1-612.03; and

(6) Continuous temporary service as an employee of a cafeteria or lunchroom operated in the public school buildings of the District of Columbia during a period before the date on which the cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately before appointment as a teacher in the public schools of the District of Columbia; provided, that portion of the annuity which results from credit for service allowable under paragraphs (1) and (3) of this subsection shall be reduced by the amount of any annuity that the retired teacher is entitled to receive under a federal, state, or municipal retirement or pension system with respect to the service, except that that portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit that the teacher is required to make under the provisions of this section in order to obtain credit for such service; provided further, that no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with §§ 1-612.01, 1-612.02, and 1-612.03, shall be given to a teacher until the teacher shall have deposited to the credit of the District of Columbia Teachers' Retirement Fund a sum equal to:

(A) The accumulated contributions that the teacher would have had credited to the teacher's individual account if the service had been rendered on active duty in the public schools of the District of Columbia, the contributions to be based on the average annual salary of the class to which the teacher is appointed; and

(B) Interest thereon computed in accordance with § 38-2021.24(b); provided further, that contributions to the retirement fund made by a teacher on education leave with part pay shall be determined in accordance with the provisions of § 38-2021.01, but otherwise no provision of this part shall be interpreted to deprive a teacher employed by the Board of Education of any rights or benefits allowable under §§ 1-612.01, 1-612.02, and 1-612.03. If the teacher so elects, the teacher may deposit the required sum in the District of Columbia Teachers' Retirement Fund in monthly installments, upon making a claim with the District of Columbia Retirement Board. Notwithstanding any other provision to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code. Except as otherwise provided in this subsection, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

(b) A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves

his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this part, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this part, except that such teacher shall not be considered as retaining his teaching position beyond 6 months after June 4, 1957, or the expiration of 5 years of such military service, whichever is later.

(c) Nothing in this part shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided.

(d) Notwithstanding the provisions of this section, any teacher who is entitled to purchase service credit under the provisions of § 38-1970(d) shall purchase such credit based on the salary received from the Board of Higher Education during the period of service to be credited.

(Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(5); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(b); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, §§ 201(3), 202(a)(1), 203(b); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 253(a)(3); May 10, 1989, D.C. Law 7-231, § 34(a), 36 DCR 492; Apr. 13, 2005, D.C. Law 15-354, § 55(d), 52; May 1, 2013, D.C. Law 19-312, § 2(f), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.03, § 38-2021.27, and § 38-2023.14.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312 rewrote (a).

Temporary Amendment of Section. — Section 2(f) of D.C. Law 19-313 amended subsection (a) to read as follows:

“(a) The years of service which form the basis for determining the amount of the annuity provided in section 5(a) shall be computed from the date of original appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay as does not exceed 6 months in the aggregate in a fiscal year, plus service credit that may be allowed under the provisions of this section. A teacher or former teacher who returns to duty after a period of separation is deemed, for the purpose of this section, to have been on a leave of absence without pay for that part of the period in which he or she was receiving benefits under subchapter I of 5 U.S.C. Chapter 81, or any earlier statute on which the subchapter is based. In computing an annuity under section 5(a), the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity.

In computing the length of service of retiring teachers credit may be given, year for year, for:

“(1) Public school service or its equivalent outside the District of Columbia but not to exceed 10 years;

“(2) Continuous temporary service in the public schools of the District immediately before probationary appointment;

“(3) Service in the District government or the government of the United States allowable under subchapter III of 5 U.S.C. § 83;

“(4) Periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) before the date of the separation upon which title to annuity is based; provided, that if a teacher is awarded retired pay on account of military service, the teacher's military service shall not be included unless the retired pay is awarded on account of a service-connected disability:

“(A) Incurred in combat with an enemy of the United States; or

“(B) Caused by an instrumentality of war and incurred in the line of duty during an enlistment or employment as provided in Veterans Regulation No. 1(a), part 1, paragraph 1, or is awarded under 10 U.S.C. § 12736;

“(5) Educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 1201, 1202, and 1203 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective

tive March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-612.01, 1-612.02, and 1-612.03); and

“(6) Continuous temporary service as an employee of a cafeteria or lunchroom operated in the public school buildings of the District of Columbia during a period before the date on which the cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately before appointment as a teacher in the public schools of the District of Columbia; provided, that portion of the annuity which results from credit for service allowable under paragraphs (1) and (3) of this subsection shall be reduced by the amount of any annuity that the retired teacher is entitled to receive under a federal, state, or municipal retirement or pension system with respect to the service, except that that portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit that the teacher is required to make under the provisions of this section in order to obtain credit for such service; provided further, that no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 1201, 1202, and 1203 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective October 1, 1987 (D.C. Law 2-139; D.C. Official Code § 1-612.01, 1-612.02, 1-612.03), shall be given to a teacher until the teacher shall have deposited to the credit of the District of Columbia Teachers’ Retirement Fund a sum equal to:

“(A) The accumulated contributions that the teacher would have had credited to the teacher’s individual account if the service had been rendered on active duty in the public schools of the District of Columbia, the contributions to be based on the average annual salary of the class to which the teacher is appointed; and

“(B) Interest thereon computed in accordance with section 24(b); provided further, that contributions to the retirement fund made by a teacher on education leave with part pay shall be determined in accordance with the provisions of section 1, but otherwise no provision of this act shall be interpreted to deprive a teacher employed by the Board of Education of any rights or benefits allowable under sections 1201, 1202, and 1203 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-612.01, 1-612.02, 1-612.03). If the teacher so elects, the teacher may deposit the required sum in the District of Columbia Teachers’ Retirement Fund in monthly installments, upon making a claim with the District of Columbia Retirement Board. Notwithstanding any other provision to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with section 414(u) of the Internal Revenue Code. Except as otherwise provided in this subsection, this section shall not be construed to allow any teacher more than one year’s credit for all services rendered in any one fiscal year.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.09. Deferred annuity; annuity to survivors.

(a) Should a teacher to whom this part applies, after completing 5 years of eligible service and before becoming eligible for retirement, become separated from the service, the teacher may elect to receive a deferred annuity, computed as provided in § 38-2021.05, beginning at the age of 62 years and terminating on the date of the teacher’s death; provided, that a teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits; provided further, that no teacher who shall withdraw the amount of the teacher’s deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless the teacher shall repay to the Custodian of Retirement Funds as defined in § 1-702(6), for deposit in the District of Columbia Teachers’ Retirement Fund, established by § 1-713(a), the amount withdrawn by him (including the interest thereon) plus interest computed in

accordance with § 38-2021.24(c); and provided further, that the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100.

(b)(1) In the event any teacher to whom this part applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service and is survived by a spouse or domestic partner, such surviving spouse or domestic partner shall be paid an annuity beginning the day after the teacher dies, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 38-2021.05 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of: (A) forty per centum of his average salary; or (B) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 55 years of age. Such annuity and any right thereto shall terminate on the last day of the month before: (A) the surviving spouse or domestic partner dies; or (B) the surviving spouse or domestic partner remarries or enters a new domestic partnership before becoming 55 years of age. In the case of a surviving spouse or domestic partner whose annuity under this paragraph is terminated because of remarriage or entry into a new domestic partnership before becoming 55 years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, or the new domestic partnership is terminated in accordance with § 32-702(d), if:

(i) The surviving spouse or domestic partner elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving spouse or domestic partner may be entitled, under this part or another retirement system for employees of the federal or District government, by reason of the remarriage or new domestic partnership; and

(ii) Any lump sum paid on termination of the annuity is repaid to the Custodian of Retirement Funds (as defined in § 1-702(6), for deposit in the District of Columbia Teachers' Retirement Fund established by § 1-713(a).

(2) If any teacher to whom this part applies shall die after completing at least 18 months of eligible service or after having retired under the provisions of § 38-2021.03 or § 38-2021.04 and is survived by a spouse or domestic partner, each surviving child shall be paid an annuity equal to the smallest of: (A) sixty per centum of the teacher's average salary divided by the number of children; (B) \$ 900; or (C) \$ 2,700 divided by the number of children. If such teacher is not survived by a spouse or domestic partner, each surviving child shall be paid an annuity equal to the smallest of: (A) seventy-five per centum of the teacher's average salary divided by the number of children; (B) \$ 1,080; or (C) \$ 3,240 divided by the number of children. The child's annuity shall commence on the first day after the teacher dies. Such annuity and the right thereto terminate on the last day of the month before the child: (i) becomes 18 years of age unless he is then a student as described or incapable of self-support; (ii) becomes capable of self-support after becoming 18 years of age unless he or she is then such a student; (iii) becomes 22 years of age if he or she is then such a student and capable of self-support; (iv) ceases to be such a

student after becoming 18 years of age unless he or she is then incapable of self-support; or (v) dies or marries; whichever first occurs. Upon the death of the surviving spouse or domestic partner or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such spouse, domestic partner, or child had not survived the teacher.

(3) In the event any teacher to whom this part applies shall die subsequent to March 6, 1952, after completing at least 18 months of eligible service, and is not survived by a spouse, domestic partner, or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to 55% of the amount of an annuity computed as provided in subsection (a) of § 38-2021.05 with respect to such teacher, except that, in the computation of the annuity under such subsection, the annuity of the teacher shall be at least the smaller of 40% of his average salary, or the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become 60 years of age; provided, that such payments shall be made jointly to surviving dependent parents and payment of such annuity shall continue after the death of either dependent parent; provided further, that all such payments or any right thereto shall cease upon the death of both dependent parents.

(4) In the event that a teacher to whom this part applies shall die after January 1, 2007, while performing qualified military service, the survivor or survivors of the teacher shall be entitled to receive any additional benefits provided under this part (other than benefit accruals relating to the period of qualified military service) as if the teacher resumed employment and then terminated employment on account of death.

(b-1) Effective as of January 1, 2007, benefits payable under this part shall not be paid until at least 30 days, or a shorter period as may be permitted by law, but no more than 180 days after a teacher's receipt of required distribution notices and election forms pursuant to section 402(f) of the Internal Revenue Code. The notices must include a description of the teacher's right, if any, to defer receipt of a distribution, the consequences of failing to defer receipt of the distribution, the relative value of optional forms of benefit, and other information as may be required by applicable regulations and guidance.

(c) As used in this section:

(1) The term "spouse" means a surviving wife or husband of an individual, who either shall have been married to such individual for at least 2 years immediately preceding the individual's death, or is the mother or father of issue by such marriage.

(2) The term "child" means:

(A) An unmarried child under 18 years of age, including:

(i) An adopted child; and:

(ii) A stepchild or recognized natural child who lived with the teacher in a regular parent-child relationship;

(B) Such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age 18; or

(C) Such unmarried child between 18 and 22 years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. For the purpose of this paragraph and paragraph (2) of subsection (b) of this section, a child whose 22nd birthday occurs before July 1st or after August 31st of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become 22 years of age on the 1st day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if he shows to the satisfaction of the District of Columbia Retirement Board that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(3) The term “dependent parents” means the natural parents of a teacher who were receiving one half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term “dependent father” or “dependent mother” means the natural father or natural mother of a teacher who was receiving one half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) Repealed.

(6) Questions of dependency and disability arising under this section shall be determined by the District of Columbia Retirement Board and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

(7) The term “domestic partner” shall have the same meaning as provided in § 32-701(3), and who shall have been a domestic partner with such individual for at least 2 years immediately preceding his death.

(8) The term “qualified military service” shall mean any military service in the uniformed services, as defined in 38 U.S.C. § 43, by a teacher, if the teacher is entitled to reemployment rights with respect to such military service, all within the meaning of section 414(u)(5) of the Internal Revenue Code.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85-46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87-881, title II, § 203(b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88-575, § 202; Dec. 29, 1967, 81 Stat. 748, Pub. L. 90-231, § 1(6); May 22, 1970, 84 Stat. 258, Pub. L. 91-263, § 1(e); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 201(4); Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, §§ 123(b)(1)(D), (E), 253 (a)(4); Apr. 13, 2005, D.C. Law 15-354, § 55(e), 52 DCR 2638; Sept. 12, 2008, D.C. Law 17-231, § 32(b), 55 DCR 6758; May 1, 2013, D.C. Law 19-301, § 3(b), 60 DCR 2310; May 1, 2013, D.C. Law 19-312, § 2(g), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.04, § 38-2021.05, § 38-2021.13, § 38-2021.21, § 38-2021.27, and § 38-2023.14.

Effect of amendments.

The 2013 amendment by D.C. Law 19-301 substituted “before becoming 55 years of age” for “before becoming 60 years of age” throughout (b)(1).

The 2013 amendment by D.C. Law 19-312 rewrote (a); and added (b)(4), (b-1), and (c)(8).

Temporary Amendment of Section. —

Section 2(g)(1) of D.C. Law 19-313 amended subsection (a) to read as follows:

“(a) Should a teacher to whom this act applies, after completing 5 years of eligible service and before becoming eligible for retirement, become separated from the service, the teacher may elect to receive a deferred annuity, computed as provided in section 5, beginning at the age of 62 years and terminating on the date of the teacher’s death; provided, that a teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits; provided further, that no teacher who shall withdraw the amount of the teacher’s deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless the teacher shall repay to the Custodian of Retirement Funds as defined in section 102(6) of the District of Columbia Retirement Reform Act, effective November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-702(6)), for deposit in the District of Columbia Teachers’ Retirement Fund, established by section 123(a) of the District of Columbia Retirement Reform Act, effective November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-713(a)), the amount withdrawn by him (including the interest thereon) plus interest computed in accordance with section 24(c); and provided further, that the

amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding 100.”

Section 2(g)(2) of D.C. Law 19-313 added a new paragraph (b)(4) to read as follows:

“(4) In the event that a teacher to whom this act applies shall die after January 1, 2007, while performing qualified military service, the survivor or survivors of the teacher shall be entitled to receive any additional benefits provided under this act (other than benefit accruals relating to the period of qualified military service) as if the teacher resumed employment and then terminated employment on account of death.”

Section 2(g)(3) of D.C. Law 19-313 added a new subsection (b-1) to read as follows:

“(b-1) Effective as of January 1, 2007, benefits payable under this act shall not be paid until at least 30 days, or a shorter period as may be permitted by law, but no more than 180 days after a teacher’s receipt of required distribution notices and election forms pursuant to section 402(f) of the Internal Revenue Code. The notices must include a description of the teacher’s right, if any, to defer receipt of a distribution, the consequences of failing to defer receipt of the distribution, the relative value of optional forms of benefit, and other information as may be required by applicable regulations and guidance.”

Section 2(g)(4) of D.C. Law 19-313 added a new paragraph (c)(8) to read as follows:

“(8) The term ‘qualified military service’ shall mean any military service in the uniformed services, as defined in 38 U.S.C. § 43, by a teacher, if the teacher is entitled to reemployment rights with respect to such military service, all within the meaning of section 414(u)(5) of the Internal Revenue Code.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-301. — See note to § 38-2021.05.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.13. Definitions.

(a) The term “teacher,” under this part, shall include all teachers employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers’ Salary Act of 1945 [repealed], as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun “his” occurs in this part it shall be construed to mean both male and female; and the term “annual salary” shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity

allowances, provided for in the District of Columbia Teachers' Salary Act of 1945 [repealed], as amended, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to July 1, 1946, from any teacher's "annual salary" as defined in subchapter I of this chapter.

(b) The term "average salary" shall mean the largest annual rate resulting from averaging, over any period of 3 consecutive years of eligible service, or in the case of a survivor annuity under § 38-2021.09(b) based on service of less than 3 years, over the total eligible service in the public schools of the District of Columbia, a teacher's rates of annual salary in effect during such period, with each rate weighted by the time it was in effect.

(c) For purposes of this part, the term "eligible service" means service in the public schools of the District of Columbia under a temporary, probationary, or permanent appointment to a position, the rate of compensation of which is prescribed in the salary schedule adopted pursuant to §§ 1-611.11 and 1-617.16.

(d) For the purposes of this part, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

(e) For the purposes of this part, the term "domestic partnership" shall have the same meaning as provided in § 32-701(4).

(f) For the purposes of this part, the term "Internal Revenue Code" or "Internal Revenue Code of 1986" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.).

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85-46, § 1; Dec. 29, 1967, 81 Stat. 751, Pub. L. 90-231, § 1(8); May 22, 1970, 84 Stat. 257, Pub. L. 91-263, § 1(a); Oct. 21, 1972, 86 Stat. 1013, Pub. L. 92-518, title II, § 202(a)(2); May 10, 1989, D.C. Law 7-231, § 34(b), 36 DCR 492; Sept. 12, 2008, D.C. Law 17-231, § 32(d), 55 DCR 6758; May 1, 2013, D.C. Law 19-312, § 2(h), 60 DCR 3434.)

Section references. — This section is referenced in § 1-702, § 1-901.02, and § 38-2021.05.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312 added (f).

Temporary Amendment of Section. —

Section 2(h) of D.C. Law 19-313 added a new paragraph at the end to read as follows:

"For the purposes of this Act, the term 'Inter-

nal Revenue Code' or 'Internal Revenue Code of 1986' means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 et seq.)."

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.14. Records and accounts; report to Congress. [Repealed].

Repealed.

(Aug. 7, 1946, 60 Stat. 881, ch. 779, § 14; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 146(a)(2); May 1, 2013, D.C. Law 19-312, § 2(i), 60 DCR 3434.)

Temporary Repeal of Section. — Section 2(i) of D.C. Law 19-313 repealed this section.

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.15a. Disposition of forfeitures.

Forfeitures in the Teacher's Retirement Fund shall not be applied to increase the annuity of a person hereunder, but rather, shall be applied to pay administrative expenses, if and as directed by the District of Columbia Retirement Board, or used to reduce the District's contributions.

(Aug. 7, 1946, 60 Stat. 875, ch. 779, Pub. L. 79-624, § 15a, as added May 1, 2013, D.C. Law 19-312, § 2(j), 60 DCR 3434.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-312 added this section.

Temporary Addition of Section. — Section 2(j) of D.C. Law 19-313 added this section.

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.17. Funds not assignable or subject to execution.

Except as provided in subchapter VI of Chapter 5 of Title 1 (§ 1-529.01 et seq.), none of the money mentioned in this part, including any assets of the District of Columbia Teachers' Retirement Fund established by § 1-713(a), shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process, except with respect to a domestic relations order that substantially meets all of the requirements of section 414(p) of the Internal Revenue Code, as determined solely by the District of Columbia Retirement Board.

(Aug. 7, 1946, 60 Stat. 882, ch. 779, § 17; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 123(b)(1)(F); Mar. 16, 1989, D.C. Law 7-214, § 5, 36 DCR 513; May 1, 2013, D.C. Law 19-312, § 2(k), 60 DCR 3434.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-312 rewrote the section.

Temporary Amendment of Section. — Section 2(k) of D.C. Law 19-313 amended this section to read as follows:

"Except as provided in the District of Columbia Spouse Equity Act of 1988, effective March 16, 1989 (D.C. Law 7-214; D.C. Official Code § 1-529.01 et seq.), none of the money mentioned in this act, including any assets of the District of Columbia Teachers' Retirement Fund established by section 123(a) of the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; D.C.

Official Code § 1-713(a)), shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process, except with respect to a domestic relations order that substantially meets all of the requirements of section 414(p) of the Internal Revenue Code, as determined solely by the District of Columbia Retirement Board."

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.18. Applicability.

The provisions of this part shall constitute a defined benefit plan and a governmental plan, as described in section 414(d) of the Internal Revenue Code, which is intended to qualify under section 401(a) of the Internal Revenue Code. Notwithstanding anything to the contrary contained in this part, Chapter 7 of Title 1 (§ 1-701 et seq.), or Chapter 9 of Title 1 (§ 1-901.01 et seq.), the provisions of this part shall apply to and control the provision of any annuity payable. The provisions of this part shall apply to all teachers on the rolls of the public schools of the District who accrue service after June 30, 1997, under the Teachers' Retirement Program established pursuant to Chapter 9 of Title 1 (§ 1-901.01 et seq.), if otherwise eligible.

(Aug. 7, 1946, 60 Stat. 882, ch. 779, § 18; May 1, 2013, D.C. Law 19-312, § 2(l), 60 DCR 3434.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-312 rewrote the section.

Temporary Amendment of Section. — Section 2(l) of D.C. Law 19-313 amended this section to read as follows:

“Applicability.

“The provisions of this act and the associated acts shall constitute a defined benefit plan and a governmental plan, as described in section 414(d) of the Internal Revenue Code, which is intended to qualify under section 401(a) of the Internal Revenue Code. Notwithstanding anything to the contrary contained in this act, the District of Columbia Retirement Reform Act, approved November 17, 1979 (93 Stat. 866; D.C. Official Code § 1-701 et seq.), or the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998,

effective September 18, 1998 (D.C. Law 12-152; D.C. Official Code § 1-901.01 et seq.), the provisions of this act shall apply to and control the provision of any annuity payable. The provisions of this act shall apply to all teachers on the rolls of the public schools of the District who accrue service after June 30, 1997, under the Teachers' Retirement Program established pursuant to the Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Plan Act of 1998, effective September 18, 1998 (D.C. Law 12-152; D.C. Official Code § 1-901.01 et seq.), if otherwise eligible.”

Section 4(b) of D.C. Law 19-313 provided that the act shall expire after 225 days of its having taken effect.

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.24. Rollovers; purchase of service credit. [Transferred].

Recodified as § 38-2021.26.

Section references. — This section is referenced in § 38-2021.08 and § 38-2021.09.

Editor's notes. — Section 2(m) of D.C. Law

19-312 recodified former § 38-2021.24 as § 38-2021.26.

§ 38-2021.25. Internal Revenue Code limits. [Transferred].

Recodified as § 38-2021.27.

Editor's notes. — Section 2(n) of D.C. Law 19-312 recodified former § 38-2021.25 as § 38-2021.27.

§ 38-2021.26. Rollovers; purchase of service credit.

(a) An individual withdrawing a distribution under this part that constitutes an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code may elect, at the time and in the manner prescribed by the District of Columbia Retirement Board, and after receipt of proper notice, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan, within the meaning of section 402(c) of the Internal Revenue Code, in a direct rollover in accordance with section 401(a)(31) of the Internal Revenue Code. Any nontaxable distribution or portion thereof from a qualified plan may be directly rolled over tax-free to another qualified plan or a plan or annuity contract described in section 403(b) of the Internal Revenue Code, if separate accounting and other requirements are met pursuant to section 402(c)(2)(A) of the Internal Revenue Code.

(b) The Custodian of the Retirement Funds shall be entrusted with any transfer from another retirement plan for the purchase of service credit, including transfers allowed by sections 403(b) and 457 of the Internal Revenue Code of 1986. Before any transfer is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed transfers for the purchase of service credit.

(c)(1) The Custodian of the Retirement Funds shall also be entrusted with any rollover contribution from an eligible retirement plan, including:

(A) A qualified plan described in section 401(a) or 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(B) An annuity contract described in section 403(b) of the Internal Revenue Code of 1986, excluding after-tax employee contributions;

(C) An eligible plan under section 457(b) of the Internal Revenue Code of 1986 which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state; or

(D) Amounts transferred from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code of 1986 that is eligible to be rolled over and would otherwise be includible in gross income.

(2) The rollover shall be separately accounted for as member contributions that were not previously taxed. Before any rollover is received, the District of Columbia Retirement Board shall be presented with documentation sufficient to satisfy the provisions of the Internal Revenue Code of 1986 governing the substantiation of proposed rollover contributions. The rollover shall be used to purchase service credit in addition to the service credit provided under the provisions of this part.

(d) The District of Columbia Retirement Board shall administer this part in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan pursuant to the Internal Revenue Code of 1986. If a conflict should arise with a qualification requirement, the provision shall be interpreted in favor of maintaining the federal qualification requirements. The District of Columbia Retirement Board may adopt rules to implement this section.

(e) For the purposes of this section, the term:

(1) "Direct rollover" means a payment to the eligible retirement plan specified by the distributee described in section 402(e)(6) of the Internal Revenue Code.

(2) "Distributee" means a teacher or former teacher. In addition, the teacher' or former teacher's surviving spouse is a distributee with regard to the interest of the spouse or former spouse. A nonspouse beneficiary of a deceased teacher is also a distributee for purposes of this section; provided, that, in the case of a nonspouse beneficiary, the direct rollover may be made only to an individual retirement account or annuity under section 408 of the Internal Revenue Code that is established on behalf of the nonspouse beneficiary and that will be treated as an inherited IRA pursuant to the provisions of section 402(c)(11) of the Internal Revenue Code. The determination of the extent to which a distribution to a nonspouse beneficiary is required under section 401(a)(9) of the Internal Revenue Code shall be made in accordance with IRS Notice 2007-7; Q&A 17 and 18, 2007-5 I.R.B. 395.

(3) "Eligible retirement plan" means:

(A) An individual retirement account described in section 408(a) of the Internal Revenue Code, including a Roth IRA described in section 408A of the Internal Revenue Code;

(B) An individual retirement annuity described in section 408(b) of the Internal Revenue Code, including a Roth IRA described in section 408A of the Internal Revenue Code;

(C) A qualified trust described in section 401(a) of the Internal Revenue Code or an annuity plan described in section 403(a) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution;

(D) An annuity contract described in section 403(b) of the Internal Revenue Code that accepts the distributee's eligible rollover distribution; and

(E) An eligible plan described in section 457(b) of the Internal Revenue Code which is maintained by a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state, that accepts the distributee's eligible rollover distribution and agrees to account separately for amounts transferred into such plan from the arrangement described under this part. The foregoing definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a domestic relations order.

(4) "Eligible rollover distribution," within the meaning of section 402(c) of the Internal Revenue Code, means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) A distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more; and

(B) A distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code. A distribution to a nonspouse

beneficiary under section 401(f)(2)(A) of the Internal Revenue Code is an eligible rollover distribution. A portion of the distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, the portion may be paid only to an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code or to a qualified trust or annuity plan described in section 401(a) or 403(a) of the Internal Revenue Code or an annuity contract described in section 403(b) of the Internal Revenue Code if the trust or annuity plan or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(Aug. 7, 1946, ch. 799, § 24, as added Oct. 1, 2002, D.C. Law 14-190, § 3702, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 71, 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 55(h), 52 DCR 2638; renumbered as § 25 [26], May 1, 2013, D.C. Law 19-312, § 2(m), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.24.

Prior Codifications. — 2001 Ed., § 38-2021.24.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312 renumbered § 24 of the Act of Aug. 7, 1946, ch.

799, as § 25; rewrote (a); added “an eligible retirement plan, including” in the introductory language of (c); substituted “shall administer this part” for “shall administer the plan” in (d); and added (e).

Legislative history of Law 19-312. — See note to § 38-2021.01.

§ 38-2021.27. Internal Revenue Code limits.

(a) Benefits and contributions under the provisions of this part shall not be computed with reference to any compensation that exceeds that maximum dollar amount permitted by section 401(a)(17) of the Internal Revenue Code, as adjusted for increases in the cost-of-living.

(b) Notwithstanding the foregoing provisions of this part to the contrary, benefits under this part are subject to the limitations imposed by section 415 of the Internal Revenue Code, as adjusted from time to time and, to that end, effective for limitation years beginning on or after January 1, 2008:

(1)(A) To the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code, and subject to the remainder of this subsection, the maximum monthly benefit to which any teacher may be entitled in any limitation year with respect to his or her accrued retirement benefit, as adjusted from time to time pursuant to § 38-2021.21 (hereafter referred to as the “maximum benefit”), shall not exceed the defined benefit dollar limit (adjusted as provided in this subsection). In addition to the foregoing, to the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code, and subject to this subsection), the maximum annual additions for any limitation year shall be equal to the lesser of:

(i) The dollar limit on annual additions; or

(ii) 100% of the teacher’s remuneration.

(B) The defined benefit dollar limit and the dollar limit on annual additions shall be adjusted, effective January 1 of each year, under section

415(d) of the Internal Revenue Code in such manner as the Secretary of the Treasury shall prescribe. The dollar limit as adjusted under section 415(d) of the Internal Revenue Code shall apply to limitation years ending with or within the calendar year for which the adjustment applies, but a teacher's benefits shall not reflect the adjusted limit before January 1 of that calendar year. To the extent that the monthly benefit payable to a teacher who has reached his or her termination date is limited by the application of this subsection, the limit shall be adjusted to reflect subsequent adjustments made in accordance with section 415(d) of the Internal Revenue Code, but the adjusted limit shall apply only to benefits payable on or after January 1 of the calendar year for which the adjustment applies.

(2) Benefits shall be actuarially adjusted based upon the defined benefit dollar limit, as follows:

(A) There shall be an adjustment for benefits payable in a form other than a straight life annuity as follows:

(i) If a monthly benefit is payable in a form other than a straight life annuity, before applying the defined benefit dollar limit, the benefit shall be adjusted, in the manner described in sub-subparagraphs (ii) or (iii) of this subparagraph, to the actuarially equivalent straight life annuity that begins at the same time. No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits), or in the case of a form of benefit not subject to section 417(e)(3) of the Internal Revenue Code, the inclusion of a feature under which a benefit increases automatically to the extent permitted to reflect cost-of-living adjustments and the increase, if any, in the defined benefit dollar limit under section 415(d) of the Internal Revenue Code.

(ii) If the benefit of a teacher is paid in a form not subject to section 417(e) of the Internal Revenue Code, the actuarially equivalent straight life annuity (without regard to cost-of-living adjustments described in this subsection) is equal to the greater of the annual amount of the straight life annuity, if any, payable to the teacher commencing at the same time, or the annual amount of the straight life annuity commencing at the same time that has the same actuarial present value as the teacher's form of benefit, computed using a 5% interest rate and the applicable mortality designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code.

(iii) If the benefit of a teacher is paid in a form subject to section 417(e) of the Internal Revenue Code, the actuarially equivalent straight life annuity is equal to the greatest of:

(I) The annual amount of the straight life annuity having a commencement date that has the same actuarial present value as the teacher's form of benefit, computed using the interest rate and mortality table (or other tabular factor) specified in the definition of actuarial equivalent for adjusting benefits in the same form;

(II) The annual amount of the straight life annuity commencing at the time that has the same actuarial present value as the teacher's form of

benefit, computed using a 5.5% interest rate assumption and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code; or

(III) The annual amount of the straight life annuity commencing at the same time that has the same actuarial present value as the teacher's form of benefit, computed using the applicable interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code, divided by 1.05.

(iv) For the purposes of this subparagraph, whether a form of benefit is subject to section 417(e) of the Internal Revenue Code is determined without regard to the status of this part as a government plan as described in section 414(d) of the Internal Revenue Code.

(B) There shall be an adjustment to benefits that commence before age 62 or after age 65 as follows:

(i) If the benefit of a teacher begins before age 62, the defined benefit dollar limit applicable to the teacher at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limit applicable to the teacher at age 62 (adjusted for participation of fewer than 10 years, if applicable) computed using a 5% interest rate and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code. However, if the benefit provided under this part provides an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limit is the lesser of:

(I) The limitation determined under the immediately preceding sentence; or

(II) The defined benefit dollar limit, adjusted for participation of fewer than 10 years, if applicable, multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under this part at the age of benefit commencement to the annual amount of the immediately commencing straight life annuity under this part at age 62, both determined without applying the limitations of this section. The adjustment in this sub-subparagraph shall not apply as a result of benefits paid on account of disability under § 38-2021.04 or as a result of the death of a teacher under § 38-2021.09.

(ii) If the benefit of a teacher begins after age 65, the defined benefit dollar limit applicable to the teacher at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limit applicable at age 65 (adjusted for participation of fewer than 10 years, if applicable) computed using a 5% interest rate assumption and the applicable mortality table designated by the Secretary of the Treasury from time to time pursuant to section 417(e)(3) of the Internal Revenue Code. However, if the benefit provided under this part provides an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limit is the lesser of:

(I) The limitation determined under the immediately preceding sentence; or

(II) The defined benefit dollar limit (adjusted for participation of less than 10 years, if applicable) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under this part at the age of benefit commencement to the annual amount of the adjusted immediately commencing straight life annuity under this part at age 65, both determined without applying the limitations of this section. For this purpose, the adjusted immediately commencing straight life annuity under this part at the age the benefit commences is the annual amount of the annuity payable to the teacher, computed disregarding the teacher's accruals after age 65 but including any actuarial adjustments, even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under this part at age 65 is the annual amount of such annuity that would be payable under this part to a hypothetical teacher who is age 65 and has the same annuity as the teacher.

(iii) For the purposes of this subparagraph, no adjustment shall be made to the defined benefit dollar limit to reflect the probability of a teacher's death between the commencing date and age 62, or between age 65 and the commencing date, as applicable, if benefits are not forfeited upon the death of the teacher before the annuity having a commencing date. To the extent benefits are forfeited upon death before the date the benefits first commence, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the teacher's death if the benefit provided under this part does not charge the teacher for providing a qualified preretirement survivor annuity (as defined for purposes of section 415 of the Internal Revenue Code) upon the teacher's death.

(3) If the teacher has fewer than 10 years of participation in the defined benefit portion of this part (as determined under section 415 of the Internal Revenue Code and associated regulations), the defined benefit dollar limit shall be multiplied by a fraction, the numerator of which is the number of years (or part thereof) of participation under this part and the denominator of which is 10. The adjustment in this paragraph shall not apply to benefits paid on account of disability under § 38-2021.04(d) or as a result of the death of a teacher under § 38-2021.09. In the case of years of credited service credited to a teacher pursuant to § 38-2021.08:

(A) The limitations contained in paragraph (1)(A)(i) of this subsection and this paragraph shall not apply to the portion of the teacher's accrued retirement benefit (determined as of the annuity commencement date) that is attributable to any additional years of credited service under § 38-2021.08 that are actuarially funded by:

(i) A transfer or rollover from the teacher's account under a retirement plan qualified under section 401(a) of the Internal Revenue Code or an eligible deferred compensation plan within the meaning of section 457(b) of the Internal Revenue Code or from an individual retirement account; or

(ii) A direct payment.

(B) The limitations contained in paragraph (1)(A)(i) of this subsection and this paragraph shall apply to the portion of the teacher's accrued retirement benefit (determined as of the annuity commencement date) that is

attributable to any additional years of credited service under § 38-2021.08 that are not actuarially funded by:

(i) A transfer or rollover from the teacher's account under a retirement plan qualified under section 401(a) of the Internal Revenue Code or an eligible deferred compensation plan (within the meaning of section 457(b) of the Internal Revenue Code) or from an individual retirement account; or

(ii) A direct payment.

(C) The determination of the extent to which additional years of credited service under § 38-2021.08 have been actuarially funded as of the annuity commencement date shall be determined in accordance with section 411(c) of the Internal Revenue Code (using the actuarial assumptions thereunder), applied as if section 411(c) of the Internal Revenue Code applied and treating the amount transferred from a plan qualified under section 401(a) of the Internal Revenue Code, the teacher's account under an eligible deferred compensation plan (within the meaning of section 457(b) of the Internal Revenue Code), or an individual retirement account, or the amount of the direct lump-sum payment to the Custodian of Retirement Funds, as if it were a mandatory employee contribution.

(4) In addition to the foregoing, the maximum benefit and contributions shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent disqualification under section 415 of the Internal Revenue Code, with respect to any teacher who is also a participant in:

(A) Any other tax-qualified retirement plan maintained by the District of Columbia, including a defined benefit plan in which an individual medical benefit account, as described in section 415(l) of the Internal Revenue Code, has been established for the teacher;

(B) A welfare plan maintained by the District of Columbia in which a separate account, as described in section 419A(d) of the Internal Revenue Code, has been established to provide post-retirement medical benefits for the teacher; or

(C) A retirement or welfare plan, as aforesaid, maintained by an affiliated or predecessor employer, as described in regulations under section 415 of the Internal Revenue Code, or otherwise required to be taken into account under such regulations.

(5) If a teacher has distributions commencing at more than one date determined in accordance with section 415 of the Internal Revenue Code and associated regulations, the annuity payable having the commencement date shall satisfy the limitations of this subsection as of each date, actuarially adjusting for past and future distributions of benefits commencing at the other dates that benefits commence.

(6) The application of the provisions of this subsection shall not cause the maximum permissible benefit for a teacher to be less than the teacher's annuity under this part as of the end of the last limitation year beginning before July 1, 2007 under provisions of this part that were both adopted and in effect before April 5, 2007 and that satisfied the limitations under section 415 of the Internal Revenue Code as in effect as of the end of the last limitation year beginning before July 1, 2007.

(7) To the extent that a teacher's benefit is subject to provisions of section 415 of the Internal Revenue Code that have not been set forth in this part, these provisions are hereby incorporated by reference and for all purposes shall be deemed a part of this part.

(c) Notwithstanding any other provision to the contrary, all death benefit payments referred to in this section shall be distributed only in accordance with section 401(a)(9) of the Internal Revenue Code and accompanying Treasury regulations, as more fully set forth in § 38-2021.07a.

(d) For the purposes of this section, the term:

(1) "Annual additions" means the sum of the following items credited to the teacher under this part and any other tax-qualified retirement plan sponsored by the District of Columbia for a limitation year and treated as a defined contribution plan for purposes of section 415 of the Internal Revenue Code: District of Columbia contributions that are separately allocated to the teacher's credit in any defined contribution plan; forfeitures; teacher contributions (other than contributions that are picked up by the District of Columbia as described in section 414(h)(2) of the Internal Revenue Code); and amounts credited after March 31, 1984 to a teacher's individual medical account (within the meaning of section 415(l) of the Internal Revenue Code).

(2) "Defined benefit dollar limit" means the dollar limit imposed by section 415(b)(1)(A) of the Internal Revenue Code, as adjusted pursuant to section 415(d) of the Internal Revenue Code. The defined benefit dollar limit as set forth above is the monthly amount payable in the form of a straight life annuity, beginning no earlier than age 62 (except as provided in subsection (b)(2)(B)(i)) of this section and no later than age 65. In the case of a monthly amount payable in a form other than a straight life annuity, or beginning before age 62 or after age 65, the adjustments in subsection (b)(2) of this section shall apply.

(3) "Dollar limit" means the dollar limit on annual additions imposed by section 415(c)(1)(A) of the Internal Revenue Code, as adjusted pursuant to section 415(d) of the Internal Revenue Code.

(4) "Remuneration" means a teacher's wages as defined in section 3401(a) of the Internal Revenue Code and all other payments of salary to the teacher from the public schools of the District of Columbia for which the public schools of the District of Columbia is required to furnish the teacher a written statement under sections 6041(d) and 6051(a)(3) of the Internal Revenue Code. For this purpose:

(A) Remuneration shall be determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed.

(B) Remuneration does not include mandatory employee contributions picked up by the public schools of the District of Columbia pursuant to section 1.

(C) Remuneration shall include an amount that would otherwise be deemed remuneration under this definition but for the fact that it is subject to a salary reduction agreement under a plan described in section 457(b), 132(f) or 125 of the Internal Revenue Code.

(D) Remuneration with respect to any limitation year shall in no event exceed the dollar limit specified in section 401(a)(17) of the Internal Revenue Code (as adjusted from time to time by the Secretary of the Treasury). The cost-of-living adjustment in effect for a calendar year applies to remuneration for the limitation year that begins with or within such calendar year.

(Aug. 7, 1946, ch. 799, § 25, as added Oct. 1, 2002, D.C. Law 14-190, § 3702, 49 DCR 6968; Mar. 13, 2004, D.C. Law 15-105, § 71, 51 DCR 881; renumbered as § 26, May 1, 2013, D.C. Law 19-312, § 2(n), 60 DCR 3434.)

Section references. — This section is referenced in § 38-2021.25.

Prior Codifications. — 2001 Ed., § 38-2021.25.

Effect of amendments.

The 2013 amendment by D.C. Law 19-312

renumbered § 25 of the Act of Aug. 7, 1946, ch. 799, as § 26; and rewrote the section.

Legislative history of Law 19-312. — See note to § 38-2021.01.

SUBTITLE VIII. STATE LEVEL AGENCIES.

CHAPTER 26A. STATE BOARD OF EDUCATION.

Sec.

38-2652. Functions of the Board.

§ 38-2652. Functions of the Board.

(a) The Board shall:

(1) Advise the State Superintendent of Education on educational matters, including:

(A) State standards;

(B) State policies, including those governing special, academic, vocational, charter, and other schools;

(C) State objectives; and

(D) State regulations proposed by the Mayor or the State Superintendent of Education;

(2) Approve state academic standards, following a recommendation by the State Superintendent of Education, ensuring that the standards recommended by the State Superintendent of Education:

(A) Specify what children are expected to know and be able to do;

(B) Contain coherent and rigorous content;

(C) Encourage the teaching of advanced skills; and

(D) Are updated on a regular basis;

(3) Approve high school graduation requirements;

(4) Approve standards for high school equivalence credentials;

(5) Approve a state definition of:

(A) "Adequate yearly progress" that will be applied consistently to all local education agencies;

(B) And standards for “highly qualified teachers,” pursuant to the No Child Left Behind Act of 2001, approved January 8, 2002 (115 Stat. 1425; 20 U.S.C. § 6301 et seq.) (“NCLB Act”); and

(C) “Proficiency” that ensures an accurate measure of student achievement;

(6) Approve standards for accreditation and certification of teacher preparation programs of colleges and universities;

(7) Approve the state accountability plan for the District of Columbia developed by the chief state school officer, pursuant to the NCLB Act, ensuring that:

(A) The plan includes a single statewide accountability system that will ensure all local education agencies make adequate yearly progress; and

(B) The statewide accountability system included in the plan is based on academic standards, academic assessments, a standardized system of accountability across all local education agencies, and a system of sanctions and rewards that will be used to hold local education agencies accountable for student achievement;

(8) Approve state policies for parental involvement;

(9) Approve state policies for supplemental education service providers operating in the District to ensure that providers have a demonstrated record of effectiveness and offer services that promote challenging academic achievement standards and that improve student achievement;

(10) Approve the rules for residency verification;

(11) Approve the list of charter school accreditation organizations;

(12) Approve the categories and format of the annual report card, pursuant to NCLB Act;

(13) Approve the list of private placement accreditation organizations, pursuant to Chapter 29 of this title [§ 38-2901 et seq.];

(14) Approve state rules for enforcing school attendance requirements; and

(15) Approve state standards for home schooling.

(b) The Board shall conduct monthly meetings to receive citizen input with respect to issues properly before it, which may be conducted at a location in a ward.

(c) The Board shall consider matters for policy approval upon submission of a request for policy action by the State Superintendent of Education within a review period requested by the Office of the State Superintendent of Education.

(d)(1) The Board shall, by order, specify its organizational structure, staff, operations, reimbursement of expenses policy, and other matters affecting the Board’s functions.

(2) The Board shall appoint staff members, who shall serve at the pleasure of the Board, to perform administrative functions and any other functions necessary to execute the mission of the Board.

(3) Beginning in fiscal year 2013, the Board shall prepare and submit to the Mayor, for inclusion in the annual budget prepared and submitted to the Council pursuant to part D of subchapter IV of Chapter 2 of Title 1 [§ 204.41

et seq.], annual estimates of the expenditures and appropriations necessary for the operation of the Board for the year. All the estimates shall be forwarded by the Mayor to the Council for, in addition to the Mayor's recommendations, action by the Council pursuant to §§ 1-204.46 and 1-206.03(c).

(4) The Board shall be reflected in the budget and financial system as an agency-level entity.

(5) All assets, staff, and unexpended appropriations of the Office of the State Superintendent of Education or of any other agency that are associated with the Board shall be transferred to the Board by April 1, 2013.

(e) For the purposes of this section, the term "state" means District-wide and similar to functions, policies, and rules performed by states on a state-wide basis.

(June 12, 2007, D.C. Law 17-9, § 403, 54 DCR 4102; Mar. 3, 2010, D.C. Law 18-111, § 4032, 57 DCR 181; Apr. 27, 2013, D.C. Law 19-284, § 4, 60 DCR 2312.)

Section references. — This section is referenced in § 38-2601 and § 38-2602.

Effect of amendments.

The 2013 amendment by D.C. Law 19-284 rewrote (d).

Legislative history of Law 19-284. — Law 19-284, the "State Board of Education Personnel Authority Amendment Act of 2012," was

introduced in Council and assigned Bill No. 19-774. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-651 and transmitted to Congress for its review. D.C. Law 19-284 became effective on April 27, 2013.

SUBTITLE X. SCHOOL FUNDING.

CHAPTER 29. UNIFORM PER STUDENT FUNDING FORMULA.

Subchapter I. General

Sec.

38-2914. Public Education Finance Reform Commission.

Subchapter I. General

Sec.

39-125. Public library hours.

Subchapter I. General.

§ 38-2914. Public Education Finance Reform Commission.

(a)(1) An independent organization shall be retained by the Mayor of the District of Columbia to convene and staff an independent commission on public education finance reform in the District of Columbia, to be known as the Public Education Finance Reform Commission ("Commission").

(2) The Commission shall:

(A) Be conducted according to the standard procedures of the independent organization, with full cooperation of the:

(i) Council;

(ii) Mayor;

- (iii) Chancellor;
- (iv) State Superintendent of Education; and
- (v) Other government personnel;

(B) Establish a process by which the public may participate in providing information, opinion, and reaction to Commission proceedings and reports; and

(C) Post all documents that it produces on the Internet.

(3) All Commission meetings and deliberations shall be open to the public.

(b) The Commission shall study and report on revisions to the Uniform Per Student Funding Formula with regard to improvements in:

- (1) Equity;
- (2) Adequacy;
- (3) Affordability; and
- (4) Transparency, including:

(A) The maintenance of uniformity in funding between District of Columbia Public Schools ("DCPS") and public charter schools, taking into account services provided without charge by other District of Columbia agencies;

(B) The determination of the funding level needed by DCPS and the public charter schools to provide educational services sufficient to enable public school students, including special education students and English-language learners, to meet the academic standards of the District of Columbia;

(C) The fiscal ability of the District of Columbia government to provide the necessary funding level; and

(D) The presentation of the Uniform Per Student Funding Formula and calculations made pursuant to it so that the public may clearly understand the basis of the calculations and related budget appropriations.

(c)(1) Prior to the delivery of final recommendations, the Commission shall provide to the Mayor and Council an equity report detailing for fiscal years 2009 and 2010:

(A) The kinds and amounts of payments made directly to DCPS and to public charter schools from the General Fund of the District of Columbia;

(B) The kind and amount of any other transfers from the General Fund of the District of Columbia to DCPS and public charter schools from District of Columbia government agencies;

(C) The kind and value of in-kind services provided to DCPS and the public charter schools by District of Columbia government agencies; and

(D) The kind and value of reprogrammed funds from the General Fund of the District of Columbia to DCPS or the public charter schools.

(2) The equity report shall include:

(A) An analysis of the impact of these payments, transfers, in-kind services, and reprogramming on the uniformity of funding for DCPS and public charter schools;

(B) Recommendations for increasing uniformity in the 2013 budget and succeeding years; and

(C) Weaknesses in the Uniform Per Student Funding Formula Act or in its implementation, if any, that interfere with uniformity of funding.

(d) No later than November 30, 2011, the Commission shall provide the Mayor and Council with a final report and its recommendations for consideration in the development of the fiscal year 2013 budget.

(Mar. 26, 1999, D.C. Law 12-207, § 116, as added Sept. 24, 2010, D.C. Law 18-223, § 4062, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-370, § 402(e), 58 DCR 1008; Sept. 14, 2011, D.C. Law 19-21, § 7013, 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-171, § 97, 59 DCR 6190.)

Effect of amendments.

D.C. Law 19-21, in subsec. (c)(1), substituted “Prior to the delivery of final recommendations, the Commission shall provide to the Mayor and Council” for “No later than January 31, 2011, the Commission shall provide to the Council”; and, in subsec. (d), substituted “November 30, 2011” for “June 30, 2011”.

The 2012 amendment by D.C. Law 19-171 made a technical correction to D.C. Law 19-21 which did not affect this section as codified.

Legislative history of Law 19-21. — For

history of Law 19-21, see notes under § 47-305.02.

Legislative history of Law 19-171. — Law 19-171, the “Technical Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-397. The Bill was adopted on first and second readings on Mar. 20, 2012, and Apr. 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

TITLE 39. LIBRARIES AND CULTURAL INSTITUTIONS.

SUBTITLE II. CULTURAL INSTITUTIONS.

Chapter

2. Commission on the Arts and Humanities.

Subchapter I. General.

§ 39-125. Public library hours.

[Not funded].

(Apr. 20, 2013, § 2, D.C. Law 19-256, 60 DCR 990.)

Legislative history of Law 19-256. — Law 19-256, the “Public Library Hours Expansion Act of 2012,” was introduced in Council and assigned Bill No. 19-883. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 10, 2013, it was assigned Act No. 19-592 and transmitted to Congress for its review. D.C. Law 19-256 became effective on April 20, 2013.

Editor’s notes. — Applicability of D.C. Law 19-256: Section 3 of D.C. Law 19-256 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

SUBTITLE II. CULTURAL INSTITUTIONS.

CHAPTER 2. COMMISSION ON THE ARTS AND HUMANITIES.

Sec.		Fund; establishment; accounting;
39-202. Definitions.		investment.
39-204. Powers.		
39-205.01. Arts and Humanities Enterprise		

§ 39-202. Definitions.

As used in this chapter:

(1) The term “Mayor” means the Mayor of the District of Columbia established under § 1-204.21.

(2) The term “Council” means the Council of the District of Columbia established under § 1-204.01.

(3) The term “Commission” means the Commission on the Arts and Humanities established by § 39-203.

(4) The term “arts” includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, exhibition of those major art forms, and the study and application of the arts to the human environment.

(5) The term “humanities” includes, but is not limited to, the study of the following: language, both modern and classical; linguistics; literature; history; jurisprudence; philosophy; archeology; comparative religion; ethics; the history, criticism, theory, and practice of the arts; those aspects of the social sciences which have humanistic content and employ humanistic methods; and the study and application of the humanities to the human environment with particular attention to the relevance of the humanities to the current conditions of national life.

(6) The term “public art” means sculptures, murals, mosaics, bas-reliefs, frescoes, tapestries, monuments, fountains, environmental designs, and other visual art forms that are intended to enhance the aesthetic quality of a public building, park, street, or sidewalk or other public place with which they are physically or spatially connected. The term “public art” shall not include landscape design or the incidental ornamentation of functional structural elements or accessories unless designed by a visual artist as part of an artwork design authorized by the Commission.

(7) The term “Fund” means the Arts and Humanities Enterprise Fund established by § 39-205.01.

(Oct. 21, 1975, D.C. Law 1-22, § 3, 22 DCR 2083; June 25, 1986, D.C. Law 6-125, § 2(a), 33 DCR 2945; Jan. 29, 1998, D.C. Law 12-42, § 2(a), 44 DCR 5577.)

§ 39-204. Powers.

The Commission shall:

(1) Take action concerning the needs of the residents of the District of Columbia for activities in the arts and humanities, and concerning the development and improvement of activities in the arts and humanities in the District of Columbia;

(2) Prepare an annual plan of artistic projects and productions in the District of Columbia meeting the requirements of §§ 5(c) and 5(g) of the National Foundation on the Arts and Humanities Act of 1965, and act as the designated state agency for the District of Columbia, as referred to in § 5(g)(2)(A) of the National Foundation on Arts and Humanities Act of 1965, as amended;

(3) Make grants to individuals and groups of individuals for projects and productions in the arts and humanities;

(4) Cooperate and be empowered to contract with governmental departments and agencies, private organizations, consultants, and residents of the District of Columbia to develop and undertake programs which will encourage maximum participation in activities in the arts and humanities and promote greater appreciation and enjoyment of the arts and humanities;

(5)(A) Accept donations, gifts by devise or bequest, grants, and any other type of asset from individuals, clubs, groups, corporations, partnerships, and other governmental entities;

(B) Manage any property or funds in accordance with the provisions or conditions of any donations, gifts, grants, or other transfers including the investment of the principal of such property and funds; and

(C) Deposit all funds raised pursuant to this subsection in the Fund.

(5A) Sell promotional items and prints of works of art owned by the Commission, at prices established by the Commission;

(5B) Loan works of art owned by the Commission to other entities, including museums, universities, and companies, either at no cost or at prices established by the Commission;

(6) Be empowered to appoint advisory panels in the various fields of the arts and humanities, as the Commission may deem necessary, the members of which shall serve without compensation;

(7) Adopt and modify bylaws and be empowered to adopt regulations as authorized by law; and

(8)(A) Develop and annually update, after holding a public hearing, a public arts plan that establishes priorities for the selection and location of public art for the upcoming fiscal year; and

(B) Prepare an annual report at the end of each fiscal year on the implementation of that year's public arts plan.

(1973, Ed., § 31-1904; Oct. 21, 1975, D.C. Law 1-22, § 5, 22 DCR 2086; June 25, 1986, D.C. Law 6-125, § 2(b)-(d), 33 DCR 2945; Jan. 29, 1998, D.C. Law 12-42, § 2(b), 44 DCR 5577; Sept. 24, 2010, D.C. Law 18-223, § 2002(a), 57 DCR 6242.)

Section references. — This section is referenced in § 39-205.

§ 39-205.01. Arts and Humanities Enterprise Fund; establishment; accounting; investment.

(a) There is established the Arts and Humanities Enterprise Fund ("Fund") to be operated by the Commission.

(a-1) There shall be deposited into the Fund:

- (1) Private donations, gifts, and grants; and
- (2) Proceeds of the sale or loan of works of arts, prints, and promotional items.

(b) The monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District or any other fund of the District.

(c) By October 1st of each year, the Commission shall publish in the District of Columbia Register and in a report submitted to the Council, a specific accounting of how monies in the Fund were expended and any remaining balance. The accounting shall include the following:

- (1) The name of any donors or anonymous contributions;
- (2) The amounts of each contribution;
- (3) A description of any donated property; and
- (4) Identification of the programs or recreation centers where the funds have been expended.

(d) Proceeds in the Fund may be expended for the administration, improvement, and maintenance of property and programs managed by the Commission.

(e) Proceeds in the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures.

(Oct. 21, 1975, D.C. Law 1-22, § 6a, as added Jan. 29, 1998, D.C. Law 12-42, § 2(c), 44 DCR 5577; Apr. 20, 1999, D.C. Law 12-264, § 29, 46 DCR 2118; Sept. 24, 2010, D.C. Law 18-223, § 2002(b), 57 DCR 6242.)

Section references. — This section is referenced in § 39-202.

DIVISION VII. PROPERTY.

TITLE 42. REAL PROPERTY.

SUBTITLE I. GENERAL.

Chapter

8. Mortgages and Deeds of Trust.

SUBTITLE II. BROKERS AND REALTORS.

18. Real Estate Sale or Rent Signs.

SUBTITLE V. HOUSING FINANCE AND ASSISTANCE.

25. Government Employer-Assisted Housing Program.

SUBTITLE VI. NUISANCE PROPERTY.

31. Drug-, Firearm-, or Prostitution-Related Nuisance Abatement.

31B. Quick Acquisition of Abandoned and Nuisance Property. [Repealed].

SUBTITLE I. GENERAL.

CHAPTER 8. MORTGAGES AND DEEDS OF TRUST.

Sec.

42-815.02. Foreclosure mediation.

§ 42-815. Application to court to fix terms and determine notice of sale; notice under power of sale provision.

Section references. — This section is referenced in § 42-815.01 and § 42-815.02.

CASE NOTES

ANALYSIS

Notice of foreclosure sale.

—Manner of notice, notice of foreclosure sale.

Notice of foreclosure sale.

— **Manner of notice, notice of foreclosure sale.**

Summary judgment was unwarranted on a

borrower's claim regarding whether a lender sent a required notice of foreclosure to the borrower at his correct address because there was a genuine dispute as to whether the lender received a change of address notice which would have required the lender to send the notice of foreclosure to a new address. *Henok v. Chase Home Fin., LLC*, — F. Supp. 2d —, 2013 U.S. Dist. LEXIS 25316 (D.D.C. Feb. 25, 2013).

§ 42-815.02. Foreclosure mediation.

(a) For the purposes of this section, the term:

(1) “Borrower” means a residential mortgage borrower and, if different from the residential mortgage borrower, the person who holds record title.

(2) “Commissioner” means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) “Lender” means a residential mortgage lender. The term “lender” shall include a trustee.

(4) “Loss mitigation analysis” means an analysis, performed by the lender, of a borrower’s financial condition, using information in the borrower’s loss mitigation application and any other information available to the lender, to evaluate and recommend options in lieu of foreclosure available to borrower from the lender.

(5) “Mediation” means a meeting between lender or trustee and the borrower, with the help of a neutral third-party mediator appointed by the Mediation Administrator, to attempt to reach agreement on a loss mitigation program for the borrower, including the renegotiation of the terms of a borrower’s residential mortgage, loan modification, refinancing, short sale, deed in lieu of foreclosure, and any other options that may be available in lieu of foreclosure.

(6) “Mediation Administrator” means an individual designated by the Commissioner to administer mediation services under this section.

(7) “Mediation certificate” means a document issued by the Commissioner to a lender evidencing compliance with the mediation requirements of this act.

(8) “Mediation election form” means a form, prescribed by the Commissioner, upon which the borrower may elect to participate in mediation and certify compliance with the lender’s loss mitigation documentation requirements.

(9) “Mediation report” means a summary of the mediation provided by the mediator to the Mediation Administrator on a form prescribed by the Commissioner.

(10) “Mortgage” means a lien instrument, including a mortgage or deed of trust, with at least 2 parties, in which the borrower grants a lien on residential real property to the lender as security for the repayment of a note or loan.

(11) “Notice of default on residential mortgage” means a notice given pursuant to § 42-815(b)(1), in the form that the Mayor shall, by rule, prescribe, which shall contain:

(A) The name and telephone number of the lender;

(B) The following loan information:

(i) The amount of the principal balance and outstanding interest owed;

(ii) All past due payments;

(iii) Penalties; and

(iv) The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees; and

(C) Any other information that the Mayor shall, by rule, prescribe.

(12) "Notice of intention to foreclose a residential mortgage" means a notice given pursuant to § 42-815(c).

(13) "Power of sale" means the right of a lender to sell residential real property after an uncured default at a public auction as provided in this act to repay the note or other obligation secured by a deed of trust or mortgage.

(14) "Residential mortgage" shall have the same meaning as in § 42-815.01(a).

(15) "Settlement agreement" means the form, prescribed by the Mediation Administrator, upon which the terms and conditions of an agreement made pursuant to the mediation are set forth.

(16) "Trustee" means the person holding a lien on real property pursuant to a residential mortgage or the assignee for foreclosure of the residential mortgage.

(b) Notwithstanding the provisions of any other law, after a notice of default of a residential mortgage has been given pursuant to § 42-815(b)(1), the lender shall engage in mediation if the borrower elects under subsection (c) of this section. Prior to the foreclosure of any residential mortgage or deed of trust, a lender shall:

(1) Include with the notice of default on a residential mortgage which is mailed to the borrower pursuant to § 42-815(b)(1):

(A) Contact information which the borrower may use to reach an agent or representative of the lender with authority to explain the mediation process;

(B) A statement recommending that the borrower seek housing counseling services;

(C) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(D)(i) A description of all loss mitigation programs available from the lender and applicable to the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) A description of the eligibility requirements for the loss mitigation programs applicable to the residential mortgage subject to the notice of default of a residential mortgage for these programs;

(E)(i) An application in the form that the Mayor, by rule, shall prescribe, for the loss mitigation programs available in connection with the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) Instructions for completing and mailing the loss mitigation application, with one envelope addressed to the lender; and

(F) A mediation election form, in a form prescribed by the Mediation Administrator, with one envelope addressed to the lender, and one envelope addressed to the Mediation Administrator; and

(2) Provide a copy of the notice of default on a residential mortgage to the Mediation Administrator in accordance with the rules issued pursuant to subsection (i) of this section.

(c)(1) No later than 7 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail the following to the borrower:

(A) A statement that the borrower is subject to foreclosure and must take immediate action to avoid foreclosure;

(B) A statement that the borrower is eligible to participate in foreclosure mediation;

(C) The contact information for the Mediation Administrator and a statement instructing that the borrower should immediately contact the Mediation Administrator to obtain additional information;

(D) A statement recommending that the borrower seek housing counseling services;

(E) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(F) A statement recommending that the borrower review the mediation election form and the loss mitigation application provided by the lender;

(G) A request for the borrower immediately to contact the Mediation Administrator and the lender if the borrower has not received a loss mitigation application and mediation election form from the lender;

(H) A request for the borrower to return the mediation election form to the Mediation Administrator and the lender, in the envelopes provided, no later than 30 days from the date of the mailing of the form required by subsection (b) of this section;

(I) A request for the borrower to return the loss mitigation application to the lender, in the envelope provided, no later than 30 days after the date of the mailing of the form required by subsection (b) of this section;

(J) A statement that the borrower will lose the right [to] participate in mediation if the mediation election form and the loss mitigation application are not returned within the stipulated 30-day time period;

(K) A statement that the borrower has to pay a \$50 fee payable to the District to participate in mediation; and

(L) A statement that mediation will be held 45 days after the date of the mailing of the form required by subsection (b) of this section.

(2) No later than 20 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail to the borrower:

(A) The information specified in paragraph (1) of this subsection;

(B) A statement that the mailing is a 2nd notice and that the borrower must take immediate action to avoid foreclosure.

(d)(1) To participate in mediation, no later than 30 days after the mailing of the notice of default on a residential mortgage and information required by subsection (b) of this section, a borrower shall return the mediation election form and a \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender. A borrower shall forfeit the right to mediation if the borrower does not return the mediation election form and the \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender, within 30 days after the mailing of the notice of default on a residential mortgage.

(2) For each borrower electing to participate in mediation, the Mediation Administrator shall schedule a mediation session to commence no later than 45 days after the mailing of the notice of default on a residential mortgage.

(3) If the borrower elects to waive mediation by not paying the \$50 fee or by not returning the mediation election form or the loss mitigation application within 30 days after the mailing of the notice of default on a residential mortgage, the Mediation Administrator shall issue a mediation certificate to the lender no earlier than 45 days, but no later than 60 days, after the mailing of the form required by subsection (b) of this section. The power of sale under a mortgage shall not be exercised until the Mediation Administrator has issued a mediation certificate.

(e)(1) Each mediation required by this section shall be conducted by a mediator appointed in accordance with rules issued pursuant to subsection (i) of this section. The lender, or a representative, and the borrower, or a representative, shall attend the mediation. The lender, or its representative, shall bring to the mediation the results of its loss mitigation analysis, a true copy of the mortgage, including the mortgage note or agreement, every assignment of the mortgage, evidence proving that the lender has standing to commence foreclosure against the borrower, and any other information required pursuant to the rules issued under subsection (i) of this section. If a representative of the lender, or the borrower, attends the mediation, the representative shall:

(A) Have authority to:

(i) Address loss mitigation programs that may be available to the borrower;

(ii) Renegotiate the terms of the residential mortgage, including a loan modification; and

(iii) Negotiate any other options that may be available in lieu of foreclosure; or

(B) Have access at all times during the mediation to a person with such authority.

(2)(A) The lender shall be subject to civil penalties payable to the District as follows:

(i) If the lender, or a representative, fails to attend the mediation, a penalty of \$500 shall be imposed;

(ii) If the lender, or a representative, fails to bring to the mediation each document required by this subsection, a penalty of \$500 shall be imposed; or

(iii) If the lender, or a representative, fails to participate in the mediation in good faith, a penalty of \$500 shall be imposed.

(B) Penalties shall be enforceable by an action in the Superior Court of the District of Columbia.

(C) If the borrower fails to attend a scheduled mediation session without good cause shown, no later than 10 days after the scheduled mediation session missed by the borrower, the Mediation Administrator shall issue a mediation certificate to the lender.

(3) If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification or to any other options in lieu of

foreclosure, no later than 5 days after the mediation session at which the parties were not able to reach an agreement, the mediator shall prepare and submit to the Mediation Administrator, on a form prescribed by the Commissioner, a recommendation that the matter be terminated. After reviewing and considering the mediator's report and any recommendations therein, no later than 5 days after receiving the mediator's report, the Mediation Administrator may issue a mediation certificate to the lender or refer the matter to another mediator.

(4) If the parties enter a settlement agreement:

(A)(i) If the lender breaches the terms of the settlement agreement entered into during mediation, the lender shall pay a penalty of \$ 1,000 and shall be required to perform the terms of a settlement agreement.

(ii) This penalty shall be enforceable by an action in the Superior Court of the District of Columbia.

(B)(i) If the borrower breaches the terms of the settlement agreement entered into during mediation, the lender shall apply to the Mediation Administrator for a mediation certificate.

(ii) Upon receipt of the lender's application for a mediation certificate due to the borrower breaching the terms of the settlement agreement, no later than 10 days after the receipt of the application, the Mediation Administrator may issue a mediation certificate to the lender, the issuance of which shall not be unreasonably withheld.

(5) Mediation shall be concluded within 90 days of the mailing of the form required by subsection (b) of this section, unless extended for an additional 30 days by the mutual consent of both parties.

(f) The lender shall pay a fee of \$300 for each notice of default on a residential mortgage issued. If the power of sale for a property is exercised, the lender may recover the \$300 fee from the proceeds of sale if there is any amount remaining after the payment of all amounts due and owing by the borrower on the residential mortgage and the costs of the sale. The lender shall not be permitted to recover mediation fee paid if there is a deficiency upon the sale of the foreclosed property.

(g) The Mediation Administrator and each mediator who acts in good faith and without gross negligence pursuant to this section shall be immune from civil liability for those acts.

(h) Each foreclosure sale in violation of this act shall be void.

(i) Chapter 3A of Title 2 [§ 2-351.01 et seq.], or any successor act, shall not apply to any contract that the Mediation Administrator may enter into with mediators for the performance of mediation services.

(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title [§ 2-501 et seq.], shall issue rules to implement the provisions of this section. The rules shall include provisions:

(1) Ensuring that mediations occur in an orderly and timely manner;

(2) Requiring each party to a mediation to provide such information as the Mediation Administrator determines to be necessary;

(3) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith; and

(4) Establishing procedures relating to the appointment of each mediator, the training and qualification requirements for each mediator, and the compensation to be paid to each person serving as a mediator.

(k) The participation in mediation shall not waive any other legal claims that the lender or borrower may have against each other.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539b, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404; Sept. 26, 2012, D.C. Law 19-171, §§ 101, 227, 59 DCR 6190.)

Section references. — This section is referenced in § 42-815 and § 42-815.03.

Effect of amendments. — The 2012 amendment by D.C. Law 19-171 validated a

previously made technical correction in the subsection designations; and substituted “Chapter 3A of Title 2” for “§ 2-301.01 et seq.” in (i).

§ 42-1207. Notice of pendency of action (lis pendens).

Section references. — This section is referenced in § 40-303.13.

CASE NOTES

Mootness.

Because an appellate court affirmed a trial court’s order confirming the valuation of a real estate property — the sole matter that was pending before the trial court — there was no action or proceeding affecting the title to or tenancy interest in, or asserting a mortgage, lien, security interest, or other ownership interest in real property situated in the District of

Columbia. Accordingly, the challenge to the trial court’s order cancelling a lis pendens was, therefore, rendered moot under D.C. Code § 42-1207(a). *Adkins L.P. v. O St. Mgmt., LLC*, 56 A.3d 1159, 2012 D.C. App. LEXIS 505 (2012), writ of certiorari denied by 133 S. Ct. 2752, 186 L. Ed. 2d 194, 2013 U.S. LEXIS 4016, 81 U.S.L.W. 3658 (U.S. 2013).

SUBTITLE II. BROKERS AND REALTORS.

CHAPTER 18. REAL ESTATE SALE OR RENT SIGNS.

§ 42-1801. Signs on sidewalk or parking prohibited; number of signs; removal; penalties.

Editor’s notes. — Section 7 of D.C. Law 19-289 would have repealed this section.

Section 9 of D.C. Law 19-289 provided that any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.

Applicability of D.C. Law 19-289, § 7: Section 10 of D.C. Law 19-289 provided that sec-

tions 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor’s issuance of a comprehensive final rulemaking governing signs on public space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

SUBTITLE III. CONDOMINIUMS.

CHAPTER 19. CONDOMINIUMS.

Subchapter I. General Provisions.

§ 42-1901.01. Applicability of chapter; corresponding terms; supersedure of prior law.

Section references. — This section is referenced in § 42-3401.03.

CASE NOTES

Applied in *Magdalene Campbell & Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 55 A.3d 379, 2012 D.C. App. LEXIS 499 (2012).

Subchapter IV. Registration and Offering of Condominiums.

§ 42-1904.04. Public offering statement; form prescribed by Mayor; contents; use in promotions; material change in information and amendment of statement.

Section references. — This section is referenced in § 42-1903.12, § 42-1904.01, § 42-1904.03, and § 42-1904.08.

CASE NOTES

Applicability.

After a civic association's contract claims on behalf of condominium purchasers were denied, the trial court erred in dismissing the association's claim for damages under the District of Columbia Condominium Act, D.C. Code § 42-1901.01 et seq., because the claim was not based upon contract, but was based on the right of prospective purchasers to be informed, under

D.C. Code § 42-1904.04(a), of unusual and material circumstances or features affecting a condominium. The court also erred in ruling before the trial that the association's evidence would have been too speculative for the jury to award damages. *Magdalene Campbell & Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 55 A.3d 379, 2012 D.C. App. LEXIS 499 (2012).

SUBTITLE V. HOUSING FINANCE AND ASSISTANCE.

CHAPTER 25. GOVERNMENT EMPLOYER-ASSISTED HOUSING PROGRAM.

Sec. 42-2506. Assistance available for District gov-

ernment and public charter school employees.

§ 42-2506. Assistance available for District government and public charter school employees.

(a) In addition to the assistance provided in §§ 42-2504 and 42-2505, a District of Columbia government employee, an employee of a District of Columbia public charter school, or a person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or a teacher at a District of Columbia public charter school who is a first-time homebuyer in the District shall be eligible for the following assistance, subject to annual available appropriations:

(1) A sliding-scale property tax credit as follows:

- (A) An 80% property tax credit for the first year;
- (B) A 60% property tax credit for the second year;
- (C) A 40% property tax credit for the third year;
- (D) A 20% property tax credit for the fourth year; and
- (E) A 20% property tax credit for the fifth year.

(2) A \$2,000 income tax credit in the tax year the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia public charter school purchases the housing unit and each of the 4 immediately succeeding tax years; provided, that the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia public charter school remains eligible for the tax credit. The credit shall not be prorated and any portion of the credit that is not utilized in a tax year shall not be carried forward, carried back, or refunded to the District of Columbia government employee, employee of a District of Columbia public charter school, or person who has accepted an offer to be a District of Columbia police officer, firefighter, emergency medical technician, public school teacher, or teacher at a District of Columbia public charter school.

(b) Any real property owner eligible to receive a real property tax credit under this section shall receive the tax credit as of the next half of the real property tax year following the date the real property owner applied for the credit. The real property owner shall continue to receive the real property tax credit for each succeeding 9 halves of the real property tax year; provided, that the real property owner remains eligible to receive the tax credit.

(May 9, 2000, D.C. Law 13-96, § 7, 47 DCR 1081; Mar. 2, 2007, D.C. Law 16-192, § 2012(b), 53 DCR 6899; Mar. 3, 2010, D.C. Law 18-111, § 7038(a), 57 DCR 181.)

Effect of amendments.

D.C. Law 18-111 added "subject to annual available appropriations" at the end of the introductory paragraph of (a).

Legislative history of Law 18-111. — For Law 18-111, see notes following § 42-1102.02.

Editor's notes. — Section 7038(b) of D.C. Law 18-111 provided that this section shall

apply as of October 1, 2009.

SUBTITLE VI. NUISANCE PROPERTY.

CHAPTER 31. DRUG-, FIREARM-, OR PROSTITUTION-RELATED NUISANCE ABATEMENT.

Sec.
42-3101. Definitions.

§ 42-3101. Definitions.

For the purpose of this chapter, the term:

(1) "Adverse impact" means the presence of any one or more of the following conditions:

(A) Diminished real property value that is related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property;

(B) Increased fear of residents to walk through or in public areas, including sidewalks, streets, and parks, due to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia, or violence stemming therefrom;

(C) Increased volume of vehicular and pedestrian traffic to and from the property that is related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property;

(D) An increase in the number of ambulance or police calls to the property that are related to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia, or to violence stemming therefrom;

(E) Bothersome solicitations or approaches by persons wishing to engage in prostitution or to sell controlled substances or drug paraphernalia on or near the property;

(F) The presence, use, or display of firearms at or near the property;

(G) Investigative purchases of controlled substances or drug paraphernalia, the presence, use, or display of firearms, or investigative actions relating to prostitution by undercover law enforcement officers at or near the property;

(H) Arrests of persons on or near the property for criminal conduct relating to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia;

(I) Search warrants served or executed at the property relating to prostitution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia;

(J) A substantial number of complaints made to law enforcement and other government officials about alleged illegal activity associated with pros-

titution, the presence, use, or display of firearms, or the use, sale, or manufacture of controlled substances or drug paraphernalia in or near the property; or

(K) The presence, use, display, or discharge of a firearm at the property.

(2) "Community-based organization" means any group, whether unincorporated or incorporated, affiliated with or organized for the benefit of one or more communities or neighborhoods, of defined geographic boundaries, containing the drug-, firearm-, or prostitution-related nuisance, or any group organized to benefit the quality of life in a residential area containing the alleged drug-, firearm-, or prostitution-related nuisance.

(3) "Controlled substance" means any of the controlled substances as defined in § 48-901.02(4).

(4) "Drug paraphernalia" means drug paraphernalia, as defined in § 48-1101(3).

(5) "Drug-, firearm-, or prostitution-related nuisance" means:

(A) Any real property, in whole or in part, used or intended to be used to facilitate any violation of Chapter 9 of Title 48;

(B) Any real property, in whole or in part, used, or intended to be used, to facilitate prostitution, or that is used or intended to be used to unlawfully store or otherwise keep one or more firearms, or that is used or intended to be used for the sale or manufacture of controlled substances or drug paraphernalia, that has an adverse impact on the community.

(C) Any real property, in whole or in part, used or intended to be used to facilitate any violation of §§ 22-2701, 22-2703, and 22-2723, § 22-2701.01, § 22-2704, §§ 22-2705 to 22-2712, and § 22-2722.

(5A) "Firearm" shall have the same meaning as provided in § 7-2501.01(9), except that it shall not include the lawful possession of a firearm by a person who is licensed or otherwise permitted by law to possess the weapon.

(6) "Manufacturing" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly, by extraction from substances of natural origin or independent means of chemical synthesis, including the packaging or repackaging of the drug or labeling or relabeling of its container.

(7) "Owner" means the individual, corporation, partnership, trust association, joint venture, or any other business entity, and the respective agents of such individuals or entities, in whom is vested all or any part of the title to the property alleged to be a drug-, firearm-, or prostitution-related nuisance.

(8) "Property" means tangible real property, or any interest in real property, including an interest in any leasehold, license or real estate, such as any house, apartment building, condominium, cooperative, office building, storage, restaurant, tavern, nightclub, warehouse, park, median, and the land extending to the boundaries of the lot upon which such structure is situated, and anything growing on, affixed to, or found on the land.

(8A) "Prostitution" means prostitution as defined in § 22-2701.01(1) [now § 22-2701.01(3)], or any act that violates any provision of §§ 22-2701, 22-2703, and 22-2723, § 22-2704, §§ 22-2705 to 22-2712, and § 22-2722.

(9) "Tenant" means a person who resides in or occupies real property owned by another person pursuant to a lease agreement, whether written or oral, or pursuant to a tenancy at will or sufferance at common law.

(Mar. 26, 1999, D.C. Law 12-194, § 2, 45 DCR 7982; Apr. 4, 2006, D.C. Law 16-81, § 3(a), 53 DCR 1050; Mar. 2, 2007, D.C. Law 16-191, § 112, 53 DCR 6794; Nov. 6, 2010, D.C. Law 18-259, § 7(a), 57 DCR 5591.)

CHAPTER 31B. QUICK ACQUISITION OF ABANDONED AND NUISANCE PROPERTY.

Sec.

42-3151.01. to 42-3151.13. [Repealed].

§ 42-3151.01. to 42-3151.13. Definitions; petition for immediate taking; deposit in court of fair market value; judgment for excess of public charges over property value; title holder; assistance to certain displaced persons; inability to qualify for hardship petition; effect on other authority; condemnation and acquisition of open, hazardous residential buildings or other structures; notice; demolition, repair, or enclosure; designation of development or redevelopment plan for property acquired; limitation on actions against the District of Columbia; report to the Council required. [Repealed].

Repealed.

(Apr. 27, 2001, D.C. Law 13-281, §§ 401-413, 48 DCR 1888; Apr. 19, 2002, D.C. Law 14-114, § 103, 49 DCR 1468.)

Legislative history of Law 14-114. — Law 14-114, the "Housing Act of 2002", was introduced in Council and assigned Bill No. 14-183, which was referred to the Committee on Finance and Revenue. The Bill was adopted on first and second readings on December 4, 2001, and January 8, 2002, respectively. Signed by the Mayor on February 6, 2002, it was assigned Act No. 14-267 and transmitted to both Houses of Congress for its review. D.C. Law 14-114 became effective on April 19, 2002.

Editor's notes. — Section 601 of D.C. Law

13-281 provided: "The Mayor may issue rules to implement the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 in accordance with the District of Columbia Administrative Procedure Act."

Mayor's Orders. — Delegation of Authority Under the Anti-Graffiti Emergency Act of 2010, see Mayor's Order 2010-139, August 20, 2010 (57 DCR 7740).

Delegation of Authority Under the Anti Graffiti Act of 2010, see Mayor's Order 2010-176, November 26, 2010 (57 DCR 11421).

§ 42-3204. Notice of termination — Tenancies by sufferance; apportionment of rent.

CASE NOTES

Construction and application.

Where a lease was void ab initio, the tenancy was one of sufferance governed not by D.C. Code § 42-3505.01(a) but by D.C. Code § 42-

3204, which did not require that the notice to quit detail the reasons for eviction. *Brown v. M Street Five, LLC*, 56 A.3d 765, 2012 D.C. App. LEXIS 618 (2012).

§ 42-3505.01. Evictions.

Section references. — This section is referenced in § 8-231.03, § 42-2857.01, § 42-

3401.04, § 42-3402.02, § 42-3507.01, § 42-3507.02, § 42-3509.02, and § 42-3602.

CASE NOTES

Construction and application.

Where a lease was void ab initio, the tenancy was one of sufferance governed not by D.C. Code § 42-3505.01(a) but by D.C. Code § 42-

3204, which did not require that the notice to quit detail the reasons for eviction. *Brown v. M Street Five, LLC*, 56 A.3d 765, 2012 D.C. App. LEXIS 618 (2012).

§ 42-3505.02. Retaliatory action.

Section references. — This section is referenced in § 42-3402.10 and § 42-3502.05.

CASE NOTES

Jury instructions.

Tenant's requested instruction on the defense of retaliation should have been given in an eviction action which was brought by a landlord because the tenant presented sufficient evi-

dence at trial to support the tenant's request for an instruction on the defense of retaliation and the tenant did not abandon or forfeit that defense at trial. *Bridges v. Clark*, — A.3d —, 2013 D.C. App. LEXIS 19 (Jan. 24, 2013).

DIVISION VIII. GENERAL LAWS.

TITLE 46. DOMESTIC RELATIONS.

Chapter
4. Marriage.

CHAPTER 4. MARRIAGE.

Sec.
46-401. Equal access to marriage.

§ 46-401. Equal access to marriage.

(a) Marriage is the legally recognized union of 2 persons. Any person may enter into a marriage in the District of Columbia with another person, regardless of gender, unless the marriage is expressly prohibited by § 46-401.01 or § 46-403.

(b) Where necessary to implement the rights and responsibilities relating to the marital relationship or familial relationships, gender-specific terms shall be construed to be gender neutral for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law, or any other source of civil law.

(Mar. 3, 1901, 31 Stat. 1391, ch. 854, § 1283, as added Mar. 3, 2010, D.C. Law 18-110, § 2(b), 57 DCR 27.)

Section references. — This section is referenced in § 32-702.

TITLE 47. TAXATION, LICENSING, PERMITS, ASSESSMENTS, AND FEES.

- Chapter
1. General Provisions.
 3. Budget and Financial Management; Borrowing; Deposit of Funds.
 8. Real Property Assessment and Tax.
 - 13A. Revised Real Property Tax Sales.
 18. Income and Franchise Taxes.
 20. Gross Sales Tax.
 21. Closing-Out Sales.
 24. Cigarette Tax.
 27. Permits and Fees.
 28. General License Law.
 34. Miscellaneous Provisions.
 37. Inheritance and Estate Taxes.
 41. Criminal Provisions.

Chapter

44. Collections.

46. Special Tax Incentives.

CHAPTER 1. GENERAL PROVISIONS.

Sec.

47-102. Total indebtedness not to be increased.

§ 47-102. Total indebtedness not to be increased.

There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding 10 years, and by fine not more than the amount set forth in [§ 22-3571.01].

(June 11, 1878, 20 Stat. 108, ch. 180, § 13; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(a), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$10,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-132. Payment into Treasury of moneys received from sales of animals and materials.

Editor’s notes. — For updated reference to payment to the General Fund of the District of Columbia, see § 47-129.

CHAPTER 3. BUDGET AND FINANCIAL MANAGEMENT; BORROWING; DEPOSIT OF FUNDS.

Subchapter VII. Financial Responsibility and Management Assistance

Part A

Establishment and Organization of Authority

Sec.

47-391.03: Powers of Authority.

Subchapter VII. Financial Responsibility and Management Assistance.

PART A.

ESTABLISHMENT AND ORGANIZATION OF AUTHORITY.

§ 47-391.03. Powers of Authority.

(a) *Hearings and sessions.* — The Authority may, for the purpose of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Authority considers appropriate. The Authority may administer oaths or affirmations to witnesses appearing before it.

(b) *Powers of members and agents.* — Any member or agent of the Authority may, if authorized by the Authority, take any action which the Authority is authorized to take by this section.

(c) *Obtaining official data.* —

(1) *From Federal government.* — Notwithstanding sections 552 (commonly known as the Freedom of Information Act), 552a (the Privacy Act of 1974), and 552b (the Government in the Sunshine Act) of Title 5, United States Code, the Authority may secure directly from any department or agency of the United States information necessary to enable it to carry out this Act, with the approval of the head of that department or agency.

(2) *From District government.* — Notwithstanding any other provision of law, the Authority shall have the right to secure copies of such records, documents, information, or data from any entity of the District government necessary to enable the Authority to carry out its responsibilities under this Act. At the request of the Authority, the Authority shall be granted direct access to such information systems, records, documents or information or data as will enable the Authority to carry out its responsibilities under this Act. The head of the entity of the District government responsible shall provide the Authority with such information and assistance (including granting the Authority direct access to automated or other information systems) as the Authority requires under this paragraph.

(d) *Gifts, bequests, and devises.* — The Authority may accept, use, and dispose of gifts, bequests, or devises of services or property, both real and personal, for the purpose of aiding or facilitating the work of the Authority. Gifts, bequests, or devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in such account as the Authority may establish and shall be available for disbursement upon order of the Chair.

(e) *Subpoena power.* —

(1) *In general.* — The Authority may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Authority. The attendance of witnesses and the production of evidence may be required from any place

within the United States at any designated place of hearing within the United States.

(2) *Failure to obey a subpoena.* — If a person refuses to obey a subpoena issued under paragraph (1) of this subsection, the Authority may apply to a United States district court for an order requiring that person to appear before the Authority to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) *Service of subpoenas.* — The subpoenas of the Authority shall be served in the manner provided for subpoenas issued by United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) *Service of process.* — All process of any court to which application is made under paragraph (2) of this subsection may be served in the judicial district in which the person required to be served resides or may be found.

(f) *Administrative support services.* — Upon the request of the Authority, the Administrator of General Services shall promptly provide to the Authority, on a reimbursable basis, the administrative support services necessary for the Authority to carry out its responsibilities under this Act.

(g) *Authority to enter into contracts.* — The Executive Director may enter into such contracts as the Executive Director considers appropriate (subject to the approval of the Chair) to carry out the Authority's responsibilities under this Act.

(h) *Civil actions to enforce powers.* — The Authority may seek judicial enforcement of its authority to carry out its responsibilities under this Act.

(i) *Penalties.* —

(1) *Acts prohibited.* — Any officer or employee of the District government who:

(A) Takes any action in violation of any valid order of the Authority or fails or refuses to take any action required by any such order; or

(B) Prepares, presents, or certifies any information (including any projections or estimates) or report for the Board or any of its agents that is false or misleading, or, upon learning that any such information is false or misleading, fails to immediately advise the Board or its agents thereof in writing, shall be guilty of a misdemeanor, and shall be fined not more than the amount set forth in [§ 22-3571.01], imprisoned for not more than 1 year, or both.

(2) *Administrative discipline.* — In addition to any other applicable penalty, any officer or employee of the District government who knowingly and willfully violates paragraph (1) of this subsection shall be subject to appropriate administrative discipline, including (when appropriate) suspension from duty without pay or removal from office by order of either the Mayor or Authority.

(3) *Report by Mayor on disciplinary actions taken.* — In the case of a violation of paragraph (1) of this subsection by an officer or employee of the

District government, the Mayor shall immediately report to the Board all pertinent facts together with a statement of the action taken thereon.

(Apr. 17, 1995, 109 Stat. 103, Pub. L. 104-8, § 103; Apr. 26, 1996, 110 Stat. 1321 221, Pub. L. 104-134, § 153(a); Sept. 30, 1996, 110 Stat. 3009 1455, 1456, Pub. L. 104-208, §§ 5203(b), (c); enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(b), 60 DCR 2064.)

Section references. — This section is referenced in § 47-391.05.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (i)(1)(B).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 8. REAL PROPERTY ASSESSMENT AND TAX.

Subchapter II. Authority and Procedure to Establish Real Property Tax Rates

Sec.

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Subchapter II. Authority and Procedure to Establish Real Property Tax Rates.

§ 47-821. Assessments — General duties of Mayor; appointment of assessors; submission of information by property owners.

(a) The Mayor shall assess all real property, identifying separately the value of land and improvements thereon, and administer and collect the real property tax within the District. The Mayor shall also notify owners of real property of assessments and of appeal procedures. In addition, he shall maintain adequate records relating to the administration of the real property tax in the District, and provide appropriate public information concerning such tax.

(b) The Mayor shall appoint assessors competent to determine values of real property to carry out the provisions of §§ 47-820 to 47-828 and other relevant portions of this chapter. Each person so appointed shall take and subscribe an

oath to diligently, faithfully, and impartially assess all real property according to applicable law and regulations and otherwise perform the duties of office.

(c) The Mayor shall assure that information regarding the characteristics of real property, sales and exchanges of all such property, building permits, land use plans, and any other information pertinent to the assessment process shall be made available to the assessors on a timely basis.

(d)(1) The Mayor may require an owner of real property to submit such information relating to the transfers of ownership, construction or reproduction costs, and income or economic benefits derived from such property as in the Mayor's judgment will assist in the determination of the estimated market value required under this title. If an owner of real property in the District of Columbia fails to submit such information within the time and in the form prescribed, there shall be added to the real property tax levied upon the property in question for the next ensuing tax year the amount of 10% of said tax; provided, that when such information is provided after said time and it is shown that the failure to provide it was due to reasonable cause, no such addition shall be made to the tax.

(2)(A) Except as otherwise provided in this chapter or under a court order, an officer, former officer, employee, or former employee of the District may not open valuation records for public inspection or reveal any information contained in valuation records. For purposes of this section, the term "valuation records" means:

(i) Information regarding private appraisals, actual building costs, rental data, or business volume;

(ii) Income or expense forms; and

(iii) Rent rolls.

(B) Notwithstanding subparagraph (A) of this paragraph, the Mayor shall permit a valuation record of a real property to be inspected by:

(i) An owner or authorized agent of the property that is the subject of the valuation record; or

(ii) An official of the District of Columbia executive branch acting in his official capacity, having a right thereto in his official capacity; provided, that no official shall inspect or use, in any review or appeal under this chapter, any information provided to the Mayor under § 47-820(d) [(d) repealed] or this section, other than information provided to the Mayor for the real property under review or appeal; provided further, that nothing contained in this subsection shall be construed to:

(I) Prohibit the use by the official, in reviews or appeals, of statistical data in a form which ensures that the identification of a particular real property shall not be disclosed. The particular valuation records therefrom shall not be divulged or made known; or

(II) Prohibit the official from offering any information of the subject real property provided to defend the assessment of the subject real property in a review or appeal under this chapter.

(C) A violation of this paragraph shall be a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than the amount set forth in [§ 22-3571.01], by imprisonment for not more than 180 days, or

both. All prosecutions under this subparagraph shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District of Columbia.

(e)(1) The Office of the Inspector General shall arrange for an independent audit of the Office of Tax and Revenue for the purposes of examining the District's management and valuation of commercial real property assessments. The independent audit shall be prepared by an outside firm, such as the International Association of Assessing Officers, that is knowledgeable and experienced in real property appraisal, assessment administration, and real property tax policy, with a demonstrated history of assisting local and state governments in evaluating assessment practices.

(2) The scope of the audit shall include the following:

(A) An evaluation of the commercial real property assessment process;

(B) An evaluation of the organizational structure, workload statistics, performance measures, compensation requirements, staffing levels, training, qualifications, and staff development functions; and

(C) An examination of hiring practices, including whether the human resources rules and regulations to which the Office of the Chief Financial Officer is subject, hinder or enhance the ability of the Office of Tax and Revenue to attract, develop, and retain a well-qualified workforce.

(3) The independent audit shall include recommendations for improving the commercial real property assessment functions within the Office of Tax and Revenue.

(4) The Office of the Inspector General shall submit a complete copy of the 1st audit findings, along with all of the recommendations made by the firm which performed the independent audit, to the Council, the Mayor, and the Chief Financial Officer on or before December 1, 2010. Thereafter, the Office of the Inspector General shall arrange for and submit a report meeting the requirements of this section at least once every 3 years, or sooner upon request of the Council or the Mayor.

(f) The Chief Financial Officer shall submit to the Council, no later than July 1, 2010, an examination of the District's performance for the last 5 years in commercial real property valuation cases appealed by a taxpayer from the Real Property Tax Appeals Commission for the District of Columbia and decided by the Superior Court of the District of Columbia ("Superior Court") or the District of Columbia Court of Appeals. The information to be provided for each case shall include:

(1) Initial valuation of the subject property by the Office of Tax and Revenue;

(2) The Real Property Tax Appeals Commission for the District of Columbia decision on the taxpayer's appeal;

(3) Valuation of the subject property presented at trial in Superior Court by the Office of the Attorney General on behalf of the Office of Tax and Revenue;

(4) Valuation of the property presented by the taxpayer at trial in Superior Court; and

(5) The final valuation decision ordered by Superior Court or the District of Columbia Court of Appeals.

(Sept. 3, 1974, 88 Stat. 1054, Pub. L. 93-407, title IV, § 422; Jan. 3, 1975, 88 Stat. 2176, Pub. L. 93-635, § 6(e); Feb. 28, 1978, D.C. Law 2-45, § 5, 24 DCR 3614; June 22, 1983, D.C. Law 5-14, § 603, 30 DCR 2632; Sept. 9, 1989, D.C. Law 8-20, § 3, 36 DCR 4564; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 9, 2001, D.C. Law 13-305, § 502(o), 48 DCR 334; Oct. 26, 2001, D.C. Law 14-42, § 10(c), 48 DCR 7612; Oct. 19, 2002, D.C. Law 14-213, § 33(f), 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 26(c)(2), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 73(b)(2), 52 DCR 2638; Sept. 24, 2010, D.C. Law 18-223, § 7182, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-363, § 3(g)(4), 58 DCR 963; Sept. 26, 2012, D.C. Law 19-171, § 136(a), 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 286(c), 60 DCR 2064.)

Section references. — This section is referenced in § 47-825.01, § 47-825.01a, and § 47-825.03.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (d)(2)(C).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-828. Violations of assessment provisions.

Any person who shall refuse or knowingly neglect to perform any duty enjoined on him by law, or who shall consent to or connive at any evasion of the provision of the first section of the Act of March 3, 1881 (§ 47-211), or § 13 of the Act of August 14, 1894 (§ 47-602), or any other provision of this chapter shall, for each offense, be removed from office and fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for no longer than 1 year, or both, in the discretion of the court.

(Sept. 3, 1974, 88 Stat. 1057, Pub. L. 93-407, title IV, § 429; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000”.

Legislative history of Law 19-317. — See note to § 47-821.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-850.02. Residential property tax relief — One-time filing, notification of change in eligibility, liability for tax, audit.

(a) The application form filed by the individual, shareholder, or member shall apply to the initial tax year, or applicable installment, and to any succeeding tax year thereafter for which the deduction is allowed.

(b)(1) If a real property no longer qualifies as a homestead, the applicant (or current owner if there is no applicant) shall notify the Mayor of the date of the change in eligibility within 30 days after the change in eligibility. If the applicant (or current owner if there is no applicant) fails to notify timely, the deduction shall be rescinded without limitation for each tax year. Penalty and interest shall be added from the day the correct amount of tax was due but not paid.

(2) Notwithstanding paragraph (1) of this subsection, if the real property is transferred and continued to qualify as a homestead 30 days or less before the date of execution of the deed of transfer, the applicant shall not be required to notify the Mayor of the change in eligibility.

(3) If the tax is paid within 30 days of the corresponding bill, timely notification of the change in eligibility shall preclude assessment of penalty and interest.

(4) If the change in eligibility occurs during the period October 1 through March 31 of the tax year, the real property shall not be entitled to any deduction during the tax year.

(5) Notwithstanding §§ 47-850(a) and 47-850.01(a), if the change in eligibility occurs during the period April 1 through September 30, the real property shall be entitled to $\frac{1}{2}$ of the deduction, which shall be applied to the first installment only.

(6)(A) Notwithstanding the rescission of the deduction pursuant to paragraphs (4) and (5) of this subsection, if all of the applicant's ownership interest in the real property is transferred to a new owner, shareholder, or member who does not apply or qualify for the deduction, the real property shall be entitled to the apportioned amount of the deduction applicable to the installment payable during the half tax year during which the ownership interest was transferred. At the end of such half tax year, the deduction shall cease.

(B) If the applicant purchases another real property or interest in a housing cooperative for which he or she shall make application for the deduction, and the application and purchase occurs during the same half tax year when the transfer occurred, §§ 47-850(d), 47-850.01(b), and 47-850.04 shall not apply to the extent that both real properties may benefit from the deduction during that half tax year and, thereafter, only the newly purchased real property or housing cooperative in which the applicant acquired newly an interest shall benefit from the applicant's deduction.

(C) Notwithstanding the foregoing, a real property shall not benefit from more than one deduction in any half tax year; provided, that in the case of a housing cooperative, the real property shall not benefit from more than one deduction related to a dwelling unit in any half tax year.

(b-1) A denial of the deduction shall be subject to the provisions of § 47-813(d-1)(3A) to the same extent as an appeal of a Class 3 classification.

(c) If real property tax is owing as a result of an erroneous or improper deduction, the following shall apply:

(1) Except in the case of cooperative housing associations, if the real property was transferred, the applicant or former owner, and not the real property shall be personally liable for the amount of the delinquent real

property tax which was not paid timely during the period when the applicant or former owner had an ownership interest in the homestead, together with interest and penalty at the same rate as provided in this chapter for the late payment of real property tax. The tax shall be considered due on the date that the total amount of real property tax was due but unpaid and shall be collected in the manner prescribed under Chapter 44.

(2) Notwithstanding paragraph (1) of this subsection, if the homestead was transferred and the grantee failed to record timely a deed under § 47-1431 (or other evidence of the transfer in the case of a cooperative housing association), the real property shall be liable for the amount of the delinquent real property tax which was not timely paid, together with interest and penalty as provided in this chapter for the late payment of real property tax.

(3) In all other cases, the real property shall be liable for the amount of the delinquent real property tax which was not paid timely, together with interest and penalty as provided in this chapter for the late payment of real property tax.

(d)(1) The Mayor may contract with a collection agency inside or outside of the District to verify the contents of any application form or return for the purposes of determining the eligibility of any homestead.

(2) All funds collected by the collection agency and belonging to the District shall be remitted to the Mayor not less than once a month. Forms to be utilized for the remittances may be prescribed by the Mayor. The Mayor may require that the collection agency furnish a bond securing compliance with the provisions of this subsection and the contract with the District.

(3) At the discretion of the Mayor:

(A) The collection agency may charge a collection fee not in excess of 25% of the total amount of the delinquent taxes, excluding penalties and interest, that is actually collected; or

(B) The collection agency may be remunerated by fee, percentage of taxes collected, or both.

(4) Notwithstanding any other provision contained in this title, confidential information related to the owner of the real property may be provided to a collection agency for purposes of collecting a delinquent tax under this chapter. If the information is provided to a collection agency under this subsection, the collection agency shall not disclose the information to a third party, other than the owner (or his or her representative), unless the Mayor would be authorized by law to make the disclosure. A collection agency, or employee of a collection agency, violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 180 days, or both. All prosecutions under this paragraph shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District of Columbia.

(June 25, 2002, D.C. Law 14-147, § 2(e), 49 DCR 4219; June 5, 2003, D.C. Law 14-307, § 1303(e), 49 DCR 11664; Mar. 13, 2004, D.C. Law 15-105, § 80(c)(2), 51 DCR 881; Apr. 13, 2005, D.C. Law 15-354, § 73(b)(5), 52 DCR 2638; Aug. 15,

2008, D.C. Law 17-216, § 4(d), 55 DCR 7500; Mar. 25, 2009, D.C. Law 17-345, § 2(c), 56 DCR 962; July 13, 2012, D.C. Law 19-155, § 2(c), 59 DCR 5590; June 11, 2013, D.C. Law 19-317, § 286(e), 60 DCR 2064.)

Section references. — This section is referenced in § 47-405 and § 47-3504.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (d)(4).

Legislative history of Law 19-317. — See note to § 47-821.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Miscellaneous.

§ 47-861. Violations.

Except as specifically provided in this chapter, or in other provisions of law applicable to the District of Columbia, the Council may by regulation establish penalties for violations of any provisions of this chapter, including any regulation issued pursuant to this chapter. Such penalties may not exceed imprisonment for longer than 1 year, or a fine of not more than the amount set forth in [§ 22-3571.01], or both, for each offense.

(Sept. 3, 1974, 88 Stat. 1065, Pub. L. 93-407, title IV, § 477; Jan. 3, 1975, 88 Stat. 2177, Pub. L. 93-635, § 8(d); enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(g), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not to exceed \$10,000”.

Legislative history of Law 19-317. — See note to § 47-821.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-863. Reduced tax liability for property owners over age 65 and for property owners with disabilities; rules.

(a) For the purposes of this section, the term:

(1) “Adjusted gross income” shall have the same meaning as in section 62 of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 17; 26 U.S.C. § 62).

(1A) “Eligible household” means:

(A) In the case of a house or condominium, an individual’s residence:

(i) That comprises a dwelling unit;

(ii) That is Class 1 Property, as defined in § 47-813, and contains not more than 5 dwelling units therein;

(iii)(I) That is owned at least 50%, in whole or in part, by the individual who:

(aa) Is 65 years of age or older; and

(bb) Whose household adjusted gross income is less than \$100,000; or

(II)(aa) Has been determined to have a permanent and total disability by the Social Security Administration, is receiving Supplemental Security Income or Social Security Disability, is receiving railroad retirement disability benefits, or is receiving federal or District of Columbia government disability payments; and

(bb) Whose household adjusted gross income is less than \$100,000.

(B) In the case of a cooperative housing association that is Class 1 Property, as defined in § 47-813, a shareholder's or member's residence:

(i) That comprises a dwelling unit;

(ii) That is owned at least 50%, in whole or in part, by the individual who:

(I)(aa) Is 65 years of age or older; and

(bb) Whose household adjusted gross income is less than \$ 100,000; or

(II)(aa) Has been determined to have a permanent and total disability by the Social Security Administration, is receiving Supplemental Security Income or Social Security Disability, is receiving railroad retirement disability benefits, or is receiving federal or District of Columbia government disability payments; and

(bb) Whose household adjusted gross income is less than \$ 100,000; and

(iii) That, by reason of his or her ownership of stock or membership certificate, a proprietary lease, or other evidence of membership, is occupied by right by the shareholder or member with at least a 50% interest which permits the occupation of the dwelling unit.

(2) "Household adjusted gross income" means the adjusted gross income of all persons residing in a household, excluding the adjusted gross income of any person who is a tenant by virtue of a written lease for fair market value.

(3) "Residence" means the principal place of residence in the District of an individual, shareholder, or member, who is domiciled in the District.

(4) Repealed.

(5) "Taxable assessment" means the assessed value of the real property, reduced, if applicable, by the credit under § 47-864 or the deduction under § 47-850.

(b)(1) In the case of a house or condominium, an eligible household shall be eligible for a 50% deduction in computing real property tax liability. The deduction shall be computed by multiplying the tax rate by 50% of an amount equal to the current tax year's taxable assessment. The deduction shall be apportioned equally between each installment during a tax year and shall not be carried forward or carried back.

(2)(A) In the case of a cooperative housing association, the deduction shall be computed by multiplying the tax rate by 50% of an amount equal to the current tax year's taxable assessment attributable to the eligible household. The deduction shall be apportioned equally between each installment during a tax year and shall not be carried forward or carried back.

(B) The taxable assessment attributable to the eligible household shall be determined in the same manner as the cooperative housing association was assessed under § 47-820.01, including any prorations thereunder.

(c)(1) In the case of a house or condominium, and to qualify the eligible household to receive the deduction, the individual shall complete and file with the Mayor an application in a form prescribed by the Mayor. The individual shall certify, under penalty of perjury, the information provided on the application form and the application form shall be filed in the manner prescribed by the Mayor. The Mayor may require the individual to provide any information which the Mayor considers necessary, including all taxpayer identification numbers of the individual, any other owner, any person with legal or equitable title, and any person in the household of the individual. The Mayor may also require the individual, any other owner, any person with legal or equitable title, and any person in the household of the individual to submit information after the deduction has been allowed to determine whether the real property remains an eligible household and entitled to the deduction.

(2)(A) For the cooperative housing association to qualify and receive the deduction, the shareholder or member shall complete and file with the Mayor an application in a form prescribed by the Mayor. The shareholder or member shall certify, under penalty of perjury, the information provided on the application form, and the application form shall be filed in the manner prescribed by the Mayor. The Mayor may require the shareholder or member to provide any information which the Mayor considers necessary, including the taxpayer identification numbers of the shareholder or member, any other person with an ownership or membership interest, and any person in the household of the shareholder or member. The Mayor may also require the shareholder or member, any other person with an ownership or membership interest, and any person in the household of the shareholder or member to submit information after the deduction has been granted to determine whether the cooperative housing association remains entitled to the deduction for the eligible household.

(B) The Mayor may require the officers or managers of the cooperative housing association to distribute the application forms to its shareholders or members and to collect the completed application forms from the shareholders or members for return to the Mayor. Officers and managers of a cooperative housing association shall submit such other information as the Mayor may require.

(C) The deduction shall be passed on to the eligible household by the cooperative housing association during the corresponding tax year.

(d) If a properly completed and approved application is filed during the period October 1 through March 31 of the tax year, the real property shall receive the deduction for the entire tax year. Notwithstanding subsection (b) of this section, if a properly completed and approved application is filed during the period April 1 through September 30, the real property shall receive $\frac{1}{2}$ of the deduction, which shall be applied to the second installment only.

(e) The application form filed by the individual, shareholder, or member shall apply to the initial tax year, or applicable installment, and to any succeeding tax year thereafter for which the deduction is allowed.

(f)(1) Within 45 days from the date of the notice rescinding or denying the deduction, the owner may petition for an administrative review of the rescission or denial and appeal from a final determination thereof to the same extent as if the appeal were filed under § 47-825.01a(d)(2).

(2) Notwithstanding paragraph (1) of this subsection, if the eligible household is transferred and continued to qualify for the deduction 30 days or less before the date of execution of the deed of transfer, the applicant shall not be required to notify the Mayor of the change in eligibility.

(3) If the tax is paid within 30 days of the corresponding bill, timely notification of the change in eligibility shall preclude assessment of penalty and interest.

(4) If the change in eligibility occurs during the period October 1 through March 31 of the tax year, the deduction shall be disallowed for the entire tax year.

(5) Notwithstanding subsection (a) of this section, if the change in eligibility occurs during the period April 1 through September 30, the real property shall receive $\frac{1}{2}$ of the deduction, which shall be applied to the first installment only.

(6)(A) Notwithstanding the rescissions of the deduction pursuant to paragraphs (4) and (5) of this subsection, if the applicant's required ownership interest in the real property is transferred to a new owner, shareholder, or member who does not apply or qualify for the deduction, the real property shall nevertheless be entitled to the apportioned amount of the deduction applicable to the installment payable during the half tax year during which such ownership interest was transferred. At the end of the half tax year, the deduction shall cease.

(B) If the applicant purchases another real property or interest in a housing cooperative for which he or she shall make application for the deduction, and the application and purchase occurs during the same half tax year when the transfer occurred, subsections (i) and (j) of this section shall not apply to the extent that both real properties may benefit from the deduction during that half tax year and, thereafter, only the newly purchased real property or housing cooperative in which the applicant acquired newly an interest shall benefit from the applicant's deduction:

(C) Notwithstanding the foregoing, a real property shall not benefit from more than one deduction in any half tax year; provided, that in the case of a housing cooperative, the real property shall not benefit from more than one deduction related to an eligible household in any half tax year.

(f-1) A denial of the deduction shall be subject to the provisions of § 47-813(d-1)(3A) to the same extent as an appeal of a Class 3 classification.

(g) If real property tax is owing as a result of an erroneous or improper deduction, the following shall apply:

(1) Except in the case of cooperative housing associations, if the eligible household was transferred, the applicant or former owner, and not the real property shall be personally liable for the amount of the delinquent real property tax which was not paid timely during the period when the applicant or former owner had an ownership interest in the eligible household, together

with interest and penalty at the same rate as provided in this chapter for the late payment of real property tax. The tax shall be considered due on the date that the total amount of real property tax was due but unpaid and shall be collected in the manner prescribed under Chapter 44.

(2) Notwithstanding paragraph (1) of this subsection, if the eligible household was transferred and the grantee failed to timely record a deed under § 47-1431 (or other evidence of the transfer in the case of a cooperative housing association), the real property shall be liable for the amount of the delinquent real property tax which was not timely paid, together with interest and penalty as provided in this chapter for the late payment of real property tax.

(3) In all other cases, the real property shall be liable for the amount of the delinquent real property tax which was not paid timely, together with interest and penalty as provided in this chapter for the late payment of real property tax.

(h) The eligibility of an eligible household for the deduction shall not be affected by the transfer of the eligible household into a revocable trust if the transfer is without consideration and the eligible household remains the residence of the applicant-grantor before and after the transfer.

(i) No other person in the household of the individual, shareholder, or member shall claim a deduction for an eligible household in the District. The cooperative housing association shall not receive a deduction for an eligible household if the basis of the deduction is another person in the household of the shareholder or member.

(j) If an individual, shareholder, or member claims more than one eligible household in the same tax year, and has not timely notified the Mayor of all changes in eligibility, the Mayor shall disallow the deduction for all eligible households claimed by the individual, shareholder or member.

(k)(1) The Mayor may contract with a collection agency inside or outside of the District to verify the contents of any application form or return for the purposes of determining the eligibility of any eligible household.

(2) All funds collected by the collection agency and belonging to the District shall be remitted to the Mayor not less than once a month. Forms to be utilized for the remittances may be prescribed by the Mayor. The Mayor may require that the collection agency furnish a bond securing compliance with the provisions of this subsection and the contract with the District.

(3) At the discretion of the Mayor:

(A) The collection agency may charge a collection fee not in excess of 25% of the total amount of the delinquent taxes, excluding penalties and interest, that is actually collected; or

(B) The collection agency may be remunerated by fee, percentage of taxes collected, or both.

(4) Notwithstanding any other provision contained in this title, confidential information related to the owner of the real property may be provided to a collection agency for purposes of collecting a delinquent tax under this chapter. If the information is provided to a collection agency under this subsection, the collection agency shall not disclose the information to a third party, other than

the owner (or his or her representative), unless the Mayor would be authorized by law to make the disclosure. A collection agency, or employee of a collection agency, violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 180 days, or both. All prosecutions under this paragraph shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District of Columbia.

(l) In the case of a house or a condominium, the real property tax bill shall indicate whether the real property is receiving the deduction.

(Sept. 23, 1986, D.C. Law 6-153, § 5, 33 DCR 4787; Mar. 7, 1992, D.C. Law 9-56, § 5, 38 DCR 7281; Sept. 10, 1992, D.C. Law 9-145, § 105, 39 DCR 4895; Oct. 7, 1992, D.C. Law 9-177, § 8, 39 DCR 5868; June 14, 1994, D.C. Law 10-127, § 2, 41 DCR 2050; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 25, 2002, D.C. Law 14-147, § 2(g), 49 DCR 4219; Apr. 4, 2003, D.C. Law 14-282, § 11(l), 50 DCR 896; June 5, 2003, D.C. Law 14-307, § 1303(f), 49 DCR 11664; Mar. 13, 2004, D.C. Law 15-105, § 72(c), 51 DCR 881; Dec. 7, 2004, D.C. Law 15-205, § 1162(e), 51 DCR 8441; Apr. 13, 2005, D.C. Law 15-354, § 73(b)(6), 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, §§ 1082(c), 1262(b), 1297(a)(3), 52 DCR 7503; Mar. 2, 2007, D.C. Law 16-191, § 102, 54 DCR 6794; Apr. 24, 2007, D.C. Law 16-305, § 73(b), 53 DCR 6198; Aug. 15, 2008, D.C. Law 17-216, § 4(e), 55 DCR 7500; Mar. 25, 2009, D.C. Law 17-345, § 2(e), 56 DCR 962; July 13, 2012, D.C. Law 19-155, § 2(d), 59 DCR 5590; July 13, 2012, D.C. Law 19-165, § 2, 59 DCR 6188; June 11, 2013, D.C. Law 19-317, § 286(f), 60 DCR 2064.)

Section references. — This section is referenced in § 47-405, § 47-845.02, § 47-845.03, § 47-1803.02, and § 47-1806.09a.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (k)(4).

Legislative history of Law 19-317. — See note to § 47-821.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IX. Special Energy Assessment.

§ 47-895.31. Definitions.

For the purposes of this subchapter, the term:

(1) “Bonds” means the bonds, notes, or other obligations issued by the District pursuant to the Energy Efficiency Financing Act.

(2) “Chief Financial Officer” means the Chief Financial Officer of the District of Columbia.

(3) “Debt Service” means the principal and interest on the Energy Efficiency Loan.

(4) “Energy Efficiency Financing Act” means the Energy Efficiency Financing Act of 2010 [Chapter 17R of Title 8].

(5) “Energy Efficiency Loan” means an energy efficiency loan to a property owner under the Energy Efficiency Financing Act [§ 8-1778.01 et seq.].

(6) “Energy Efficiency Loan Agreement” means a loan, or other agreement, entered into pursuant to [§ 8-1778.43(a)], to make the Energy Efficiency Loan.

(7) “Indenture of Trust” means the indenture relating to the bonds, as modified, amended, or supplemented from time to time.

(8) “Lot” means real property as defined in § 47-802(1).

(9) “Tax year” has the same meaning as provided in § 47-802(7).

(10) “Special Assessment” means the special assessment levied by the District each fiscal year to fund the amount necessary to pay the debt service on the Energy Efficiency Loan and applicable fees and costs.

(11) “Special Energy Assessment Fund” means the nonlapsing fund established by section 201 of the Energy Efficiency Financing Act [§ 8-1778.21].

(May 27, 2010, D.C. Law 18-183, § 401(b), 57 DCR 3406; Apr. 20, 2013, D.C. Law 19-262, § 103(a), 60 DCR 1300.)

Section references. — This section is referenced in § 8-1778.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-262 added “and applicable fees and costs” at the end of (10).

Legislative history of Law 19-262. — Law 19-262, the “Sustainable DC Amendment Act of

2012,” was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

§ 47-895.33. Notices; collection; penalties.

(a) The Energy Efficiency Loan Agreement shall require the property owner to consent to the levy of the Special Assessment on the lots, following which consent, all actions by any owner of the lot to challenge the levy of the Special Assessment shall be forever barred. The property owner that enters into an Energy Efficiency Loan Agreement and each subsequent owner of the lot shall provide notice to the buyer of the lot of the levy of the Special Assessment; provided, that the notice shall not apply to lots sold under Chapter 13A [of this title]. Failure to receive disclosure of the Special Assessment by a subsequent owner shall not relieve the subsequent owner of the obligation to pay the Special Assessment.

(b) Special Assessments shall be collected in the same manner and at the same time as real property taxes are collected; provided, that the Special Assessments may be collected at a different time and in a different manner as determined by the Chief Financial Officer.

(c)(1) Except as provided in paragraph (2) of this subsection, an unpaid Special Assessment shall be subject to the same penalty and interest provisions as a delinquent real property tax under this chapter. A lien for an unpaid Special Assessment, including penalty and interest, shall attach to the real property in the same manner as, and with a priority immediately junior to, a lien for delinquent real property tax under Chapter 13A [of this title] and senior to all other liens. Real property sold at a tax sale for the failure to pay real property taxes shall remain subject to the obligation to pay Special

Assessments in subsequent years as provided in this subchapter. The unpaid Special Assessment shall be collected pursuant to section 47-1336.

(2) If an interest in or use of a lot is subject to the Special Assessment because it is subject to taxation under § 47-1005.01, an unpaid Special Assessment on such an interest or use shall be subject to the same penalty and interest provisions as a delinquent tax imposed under § 47-1005.01, and the unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalty as for an unpaid tax imposed under § 47-1005.01.

(May 27, 2010, D.C. Law 18-183, § 401(b), 57 DCR 3406; Apr. 20, 2013, D.C. Law 19-262, § 103(b), 60 DCR 1300.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-262 substituted “pursuant to § 47-1336” for “in the same manner and under the same conditions and subject

to the same penalties as for unpaid real property taxes” in the last sentence of (c)(1).

Legislative history of Law 19-262. — See note to § 47-895.31.

CHAPTER 10. PROPERTY EXEMPT FROM TAXATION.

§ 47-1086. United House of Prayer for All People — kitchen or feeding facilities.

Temporary Amendment of Section. — Section 2 of D.C. Law 19-296 added a new subsection (c) to read as follows:

“(c) This section shall apply as of March 1, 2011.”

Section 4(b) of D.C. Law 19-296 provided that the act shall expire after 225 days of its having taken effect.

CHAPTER 13A. REVISED REAL PROPERTY TAX SALES.

Subchapter I. General Provisions

Sec. 47-1336. Energy efficiency loan foreclosure.

Subchapter III. Redemption

47-1361. Required payments; notice to purchaser; certificate of redemption.

Subchapter IV. Foreclosure

Sec. 47-1382. Purchaser's deed; payment; compliance with terms of judgment as to payments.

Subchapter I. General Provisions.

§ 47-1336. Energy efficiency loan foreclosure.

(a) A special assessment pursuant to an energy efficiency loan agreement under subchapter IX of Chapter 8 of Title 47, shall be deemed an additional real property tax, and shall be deemed a tax under § 47-1330(2).

(b)(1) When delinquent on October 1 and for 6 months or more, the Chief Financial Officer may sell for one dollar or without any consideration, at the

Chief Financial Officer's discretion, the real property subject to the special assessment under subchapter IX of Chapter 8 of Title 47, to the applicable energy efficiency lender or servicer of the Energy Efficient Loan, or to a third party and under terms and conditions as the Chief Financial Officer may determine, notwithstanding any other provision of this chapter to the contrary.

(2) The transaction shall not be subject to the provisions of § 47-1353 or [Chapter 3A of Title 2, § 2-351.01 et seq.]. Additionally, the transaction shall not be subject to the notice requirements of §§ 47-1341 and 47-1342 or the costs set forth in § 47-1342(c).

(3) Only interest at the rate set forth in § 47-811(c) shall accrue on any delinquent Special Assessment, notwithstanding any other provision in this chapter.

(c)(1) The sale of the real property shall be evidenced by a sealed certificate of the Chief Financial Officer or the Chief Financial Officer's duly authorized representative.

(2) The sealed certificate shall be deemed a certificate of sale.

(3) The certificate of sale shall be recorded in the Office of the Recorder of Deeds by the transferee.

(4) Evidence of subsequent assignments or notice of succession in interest shall also be recorded in the Office of the Recorder of Deeds by the assignee or successor in interest, and the assignee or successor in interest shall also notify the Chief Financial Officer of the subsequent assignment or succession, including the assignee or successor's legal name, contact information, and other information that the Chief Financial Officer may require.

(5) The holder of a sealed certificate shall have filed a business tax registration with the Office of Tax and Revenue.

(d) The transferee of a sealed certificate and an assignee or successor in interest of the transferee shall have and possess the same rights, powers, lien status, and priority of payment at law or in equity as the District would have possessed if the real property had not been sold. Subject to the foregoing, the transferee or assignee shall have the same rights to enforce all tax liens as the District, including the right to foreclose upon the tax lien and cause the issuance of a deed in fee simple absolute by the Superior Court of the District of Columbia.

(e)(1) Notwithstanding a provision of this chapter to the contrary, a complaint for foreclosure of the right of redemption may be filed by the transferee and an assignee or successor in interest pursuant to § 47-1370 at any time.

(2) The transferee, or an assignee or successor in interest of the transferee, shall provide notice via both certified mail and first class mail to the property's record owner at least 60 days before a complaint for foreclosure of the right of redemption is filed. The notice shall state at a minimum that:

(A) A foreclosure action shall be commenced in no sooner than 60 days of the date of the notice;

(B) To avoid the lawsuit the outstanding liens shall be paid to the District and in what amount;

(C) If the owner does not redeem the property the owner may lose title to the property; and

(D) Once the complaint is filed, reasonable expenses under § 47-1377 shall be owed.

(3) Notwithstanding any other provision of this chapter, no expenses shall be owed to redeem the property before the complaint is filed under this section. Once the complaint is filed and the owner has not redeemed the property, expenses allowable under § 47-1377 shall become owed in order to redeem.

(f) In a cause of action in respect of a sealed certificate, the production of an instrument executed by the Chief Financial Officer or the Chief Financial Officer's duly authorized representative shall be presumptive evidence that the real property proposed to be sold by the instrument was subject to a valid and enforceable tax lien and it was duly sold to the transferee.

(Apr. 20, 2013, D.C. Law 19-262, § 103(c), 60 DCR 1300.)

Section references. — This section is referenced in § 47-895.33 and § 47-1382.

Legislative history of Law 19-262. — Law 19-262, the "Sustainable DC Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first

and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

Subchapter III. Redemption.

§ 47-1361. Required payments; notice to purchaser; certificate of redemption.

(a) To redeem the real property, the person redeeming shall pay to the Mayor, for deposit into the General Fund of the District (notwithstanding any other law), the following:

(1) If the real property was sold at tax sale to a purchaser, the amount paid by the purchaser for the real property exclusive of surplus, with interest thereon;

(2) If the real property was bid off to the District, the taxes with interest thereon from the date the real property was bid off;

(3) If the real property was bid off to the District and subsequently sold or the certificate of sale assigned to a purchaser:

(A) The taxes with interest thereon from the date the real property was bid off; plus

(B) Interest on the total amount in subparagraph (A) of this paragraph from the date the real property was subsequently sold or the certificate of sale assigned;

(4) All other taxes, interest, and penalties paid by a purchaser on behalf of the real property, with the interest that would have been owing if the purchaser had not paid the taxes provided, that the certificate of sale of the purchaser is not void;

(5) All other taxes to bring the real property current;

(5A) Any delinquent special assessment owed pursuant to an energy efficiency loan agreement under subchapter IX of Chapter 8 of Title 47[;]

(6) Unless the person redeeming furnishes the Mayor a release or acknowledgment executed by the purchaser that all expenses under § 47-1377

have been paid to the purchaser, all expenses for which the purchaser is entitled to reimbursement under § 47-1377;

(7) All expenses owing to any other purchaser; and

(8) If judgment of foreclosure of the right of redemption of the sale is set aside, the reasonable value, at the date of the judgment, of all reasonable improvements made on the real property by the purchaser and the purchaser's successors in interest, subject to § 47-1363.

(b) Notwithstanding subsection (a) of this section, payment of all real property tax liens and permitted accruals assigned or sold and transferred to third parties under § 47-1303.04 shall be required before a person may redeem under this chapter.

(c) The provisions of subsection (a) of this section may apply more than once if the real property has been sold or bid off more than once. In such case, the person redeeming shall pay all required amounts to satisfy the purchasers and the District.

(d) After receipt of the payment set forth in this section, the Mayor shall notify the purchaser that the real property has been redeemed. The purchaser shall surrender the certificate of sale and shall receive from the Mayor the amount to which the purchaser is entitled. For the purposes of this section, the Mayor may conclusively presume that the original purchaser at the tax sale is the holder of the certificate of sale, unless the Mayor receives a written notice of an assignment of the certificate of sale in accordance with this chapter.

(e) Upon request and subject to the payment of a fee, the Mayor shall execute and deliver to the person redeeming the real property a certificate of redemption, which may be recorded in the Recorder of Deeds and, when recorded, shall release any encumbrance created by the recording of the certificate of sale.

(June 9, 2001, D.C. Law 13-305, § 507(a)(2), 48 DCR 334; Oct. 26, 2001, D.C. Law 14-42, § 10(g), 48 DCR 7612; Apr. 4, 2003, D.C. Law 14-282, § 11(ii), 50 DCR 896; Apr. 20, 2013, D.C. Law 19-262, § 103(d), 60 DCR 1300.)

Section references. — This section is referenced in § 47-1073, § 47-1348, § 47-1382, and § 47-4655.

Effect of amendments.

The 2013 amendment by D.C. Law 19-262 added (a)(5A).

Legislative history of Law 19-262. — Law 19-262, the "Sustainable DC Amendment Act of

2012," was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

Subchapter IV. Foreclosure.

§ 47-1382. Purchaser's deed; payment; compliance with terms of judgment as to payments.

(a) A final judgment foreclosing the right of redemption shall direct the Mayor to execute and deliver a deed to the purchaser in fee simple on payment to the Mayor of the amount required under this section. No deed shall be executed before such payment is received. The final judgment shall direct the

Mayor to enroll the purchaser in fee simple as the owner of the real property. The fee simple interest shall be conveyed subject to:

- (1) A lien filed by the taxing agency under § 47-1340(c);
- (2) The tenancy of a residential tenant (other than a tenant described in § 47-1371(b)(1)(C) and (D));
- (3) Easements of record and any other easement that may be observed by an inspection of the real property;
- (4) An instrument securing payment of a promissory note executed under § 47-1353(a)(3); and
- (5) An energy efficiency loan agreement under subchapter IX of Chapter 8 of Title 47, and related documents or instruments and the obligation to pay the special assessment[.]

(b) Notwithstanding subsection (a)(1) of this section, the fee simple interest conveyed of a real property sold under § 47-1353(a)(3) or (b) shall not be subject to a lien filed by the taxing agency under § 47-1340(c).

(c) The purchaser shall pay all amounts that would be required of a person redeeming under § 47-1361; provided, that the purchaser shall not make payment for taxes and periods for which the purchaser purchased the certificate of sale, was assigned a certificate of sale under § 47-1349, and made payment under § 47-1354.

(c-1) Notwithstanding subsection (c) of this section, a purchaser under § 47-1336 shall not pay an amount that is a Special Assessment under subchapter IX of Chapter 8 of Title 47, unless otherwise agreed.

(d) The deed shall be prepared by the purchaser or the attorney for the purchaser and all expenses incident to the preparation, execution, delivery, and recordation of the deed shall be paid by the purchaser.

(e) The plaintiff shall provide a certified copy of the final judgment to the Mayor.

(f) If the purchaser fails to pay to the Mayor the amount required under this section within 30 days of the final judgment, the final judgment may be vacated as void by the Superior Court on the motion of any party. If the purchaser does not record the deed in the Recorder of Deeds within 30 days of the execution of the deed, the final judgment may be vacated as void by the Superior Court on the motion of any party. If a final judgment is so vacated, the deed and the certificate of sale are void and all money paid by the purchaser to the Mayor is forfeited except as provided in § 47-1354(c).

(g) Any surplus paid for a real property by a purchaser shall be applied against other taxes, interest thereon, and expenses owing on the real property for which a deed is sought if the application and timely balance payment shall result in the full payment required to obtain the deed.

(h) Any overpayment, including expenses, shall be paid by the Mayor to the person who made the overpayment. If there is a dispute regarding payment of the overpayment, the Mayor shall hold the overpayment until a court of competent jurisdiction determines the proper distribution of the overpayment.

(June 9, 2001, D.C. Law 13-305, § 507(a)(2), 48 DCR 334; Apr. 4, 2003, D.C. Law 14-282, § 11(mm), 50 DCR 896; Apr. 20, 2013, D.C. Law 19-262, § 103(e), 60 DCR 1300.)

Section references. — This section is referenced in § 47-1355, § 47-1370, and § 47-1383.

Effect of amendments.

The 2013 amendment by D.C. Law 19-262 added (a)(5) and made related changes; and added (c-1).

Legislative history of Law 19-262. — Law

19-262, the “Sustainable DC Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

CHAPTER 18. INCOME AND FRANCHISE TAXES.

Subchapter III. Net Income, Gross Income and Exclusions Therefrom, and Deductions

Sec.
47-1803.02. Gross income — Items included and excluded; “adjusted gross income” defined.

Subchapter V. Returns

Sec.
47-1805.04. Returns — Divulgence of information.

Subchapter III. Net Income, Gross Income and Exclusions Therefrom, and Deductions.

§ 47-1803.02. Gross income — Items included and excluded; “adjusted gross income” defined.

(a) *Gross income.* — The words “gross income” shall have the same meaning as defined in § 61 of the Internal Revenue Code of 1986. In addition to the items specifically included or excluded by reference to § 61(b) of the Internal Revenue Code of 1986, the following items shall also be included or excluded in the computation of District gross income:

(1)(A) For taxpayers other than individuals, estates, and trusts, interest upon the obligations of a state, territory of the United States, or any political subdivision thereof, but not including the District, shall be included in the computation of District gross income.

(B) For individuals, estates, and trusts, interest upon the obligations of a state, territory of the United States, or any political subdivision thereof, but not including the District, acquired by the taxpayer on or after January 1, 2013, shall be included in the computation of District gross income.

(C) Nothing in this paragraph shall be construed as repealing or limiting the provisions of § 9-921.

(1A) Repealed.

(2) The following items shall be excluded in the computation of District gross income:

(A) After January 23, 1983, interest and dividend income on obligations or securities of the United States, or its agencies or instrumentalities, to the extent that this income is included in federal gross income.

(B) The amount of any income or gain included in the taxpayer’s federal gross income for the taxable year to the extent that it was included as income or gain in an income or franchise tax return filed by:

(i) The taxpayer with the District for any taxable year beginning prior to January 1, 1982; or

(ii) An individual by reason of whose death the taxpayer acquired the right to receive the income or gain.

(C) The amount of any trust distribution to the taxpayer included in his federal gross income for the taxable year to the extent that such amount was previously taxed to the trust by the District.

(D) In the case of any person entitled to the distributive share of a trade or business net income that is from an unincorporated business as defined in § 47-1808.01, an amount equal to the pro rata distributive share, to the extent that portion of the distributive share so excluded is directly or indirectly reported by and taxed against any person under the provisions of this chapter.

(E) Any state or local income tax refund included in federal gross income.

(F) Income received or, in the case of a taxpayer reporting on an accrual basis, income accrued when the taxpayer was not a resident of the District.

(G) Income of any kind to the extent required by any treaty obligation of the United States, including reciprocal agreements between the United States and other countries relating to the taxability of their respective airlines and ships under foreign flag owned by foreign corporations.

(H) In the case of an International Banking Facility the gross income to the parent depository institution resulting from any IBF time deposit or any IBF loan; provided, however, that no expense or loss attributable to such income shall be allowed as a deduction under any other provision of this chapter, and; provided, further, that this exclusion from gross income shall not include any amount derived by an International Banking Facility from IBF time deposits or IBF loans if the loan or deposit of funds is secured by a mortgage, deed of trust, or other lien upon real property located within the District of Columbia.

(I) Income derived from the sale of tangible personal property to the United States by corporations and unincorporated businesses having their principal places of business located outside the District, which property is delivered from places outside the District for use outside the District; provided, however, that the taxpayer shall furnish to the Mayor a statement in writing of the amount of gross sales so made and, if required by the Mayor, a list of the names of the agencies of the United States through which such property was sold.

(J) Dues and initiation fees in the case of any club organized and operated exclusively for pleasure and recreation, no part of the net earnings of which inures to the benefit of any private individual or shareholder. As used in this subparagraph, the term "dues" means only sums paid or incurred by members on a monthly, quarterly, annual, or other periodic basis for the privilege of being members of such club and any pro rata assessment made against the members as such. The term "dues" does not include any sums paid or incurred by members or their guests for food, beverages, or other tangible personal property purchased or for the use of the club's social, athletic, sporting, and other facilities. The term "initiation fees" includes any payment,

contribution, or loan, required as a condition precedent to membership, whether or not any such payment, contribution, or loan is evidenced by a certificate of interest or indebtedness.

(K) The amount of any compensation deferred under the employee deferred compensation program pursuant to § 47-3601; provided, that the amount of any such compensation or any income attributable to the amount of compensation so deferred shall be includable in gross income for the taxable years in which such compensation or other income is paid or otherwise made available to the employee or other beneficiary.

(L) Social security and tier 1 railroad retirement benefits subject to taxation under § 86 of the Internal Revenue Code of 1986.

(M) Certain disability income payments excludable under § 105(d) of the Internal Revenue Code of 1986 before the enactment of the Social Security Amendments of 1983 (26 U.S.C. § 86).

(N) Pension, military retired pay, annuity income, or survivor benefits received from the District of Columbia or the federal government by persons who are 62 years of age or older by the end of the taxable year, except that:

(i) The exclusion shall not exceed the lesser of \$3,000 or the actual amount of the pension, military retired pay, or annuity received during the taxable years; and

(ii) The pension, military retired pay or annuity is otherwise subject to taxation under this chapter.

(O) Repealed.

(P) In the case of any person entitled to a share in the income of any corporation which is an S corporation as defined in section 1361(a) of the Internal Revenue Code of 1986, an amount equal to the pro rata share of the income, to the extent that the portion of the income so excluded is directly or indirectly reported by and taxed against any person under the provisions of this chapter.

(Q) Repealed.

(R) A relocation payment received under section 205 or 206 of the Housing Act of 2001 [§ 42-2851.05 or § 42-2851.06].

(S) The proceeds from the sale of, or the use of a transferred, tax credit under § 47-1806.08c [repealed].

(T) Homeownership assistance received by the eligible employee through a certified employer-assisted home purchase program, as those terms are defined in § 47-1807.07, and used for the purchase of a qualified residential real property.

(U) The amount received by a claimant, excluding backpay (as defined in § 47-1806.10(3) [§ 47-1806.10(a)(3)]), frontpay (as defined in § 47-1806.10(5) [§ 47-1806.10(a)(5)]), or punitive damages, whether by agreement (as reasonably allocated) or suit and whether as a lump sum or periodic payments, on account of a claim of unlawful discrimination.

(V) Income derived from any source, not to exceed \$10,000, for a person who has been determined to have a permanent and total disability by the Social Security Administration, is receiving Supplemental Security Income or Social Security Disability, is receiving railroad retirement disability benefits,

or is receiving federal or District of Columbia government disability payments; and, whose household adjusted gross income, as defined in § 47-863(a)(2), is less than \$100,000.

(W) The amount of any health care insurance premium paid by an employer for a non-employee domestic partner, as the term “domestic partner” is defined in § 32-701(3).

(X) Loans awarded and subsequently forgiven under [part F of subchapter IV of Chapter 3 of Title 1].

(Y) Fees retained by a retail establishment under [§ 8-102.03(b)(1)].

(Z) Computations of discharge of indebtedness income under section 108(i) of the Internal Revenue Code of 1986.

(AA) The amount received by a taxpayer pursuant to § 8-1774.09.

(BB) The amount received by a taxpayer from the following programs, whose funding is authorized by [§ 8-152.02]:

- (i) RiverSmart Communities: Demonstration Program;
- (ii) RiverSmart Homes Incentive Program;
- (iii) RiverSmart Homes Rebate Program; or
- (iv) RiverSmart Rooftops Greenroof Rebate Program.

(3) The monetary assistance provided to an owner of a housing accommodation under section 8 of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 662; 42 U.S.C. § 1437f), either directly or through a tenant, shall be income.

(a-1) Notwithstanding subsection (a) of this section, for the purposes of the deduction for state sales and excise taxes on the purchase of certain motor vehicles, the term “gross income” shall have the same meaning as set forth in section 61 of the Internal Revenue Code of 1986, as that section existed on December 31, 2008.

(b) *Adjusted gross income.* — The words “adjusted gross income” as used in this chapter mean:

(1) In the case of an individual, estate, or trust, the same meaning as defined in § 62 of the Internal Revenue Code of 1986; and

(2) In the case of an individual, estate, or trust not required to file a District return for a complete calendar or fiscal year, gross income reported under subsection (a) of this section, less deductions allowed under § 62 of the Internal Revenue Code of 1986, which were paid or accrued during the period covered by the District return.

(c) Repealed.

(July 16, 1947, 61 Stat. 335, ch. 258, art. I, title III, § 2; May 3, 1948, 62 Stat. 207, ch. 246, § 3; May 27, 1949, 63 Stat. 130, ch. 146, title IV, §§ 403, 420; Sept. 4, 1957, 71 Stat. 605, Pub. L. 85-281, §§ 1, 3; June 27, 1960, 74 Stat. 219, Pub. L. 86-522, § 1; Sept. 19, 1966, 80 Stat. 812, Pub. L. 89-591, § 1; Oct. 31, 1969, 83 Stat. 176, 177, Pub. L. 91-106, title VI, §§ 601(b)(1), (2), 602; Oct. 21, 1975, D.C. Law 1-23, title VI, § 601(4), 22 DCR 2106; Apr. 19, 1977, D.C. Law 1-124, title IV, § 401(a), 23 DCR 8749; Mar. 6, 1979, D.C. Law 2-158, § 4, 25 DCR 7002; Sept. 13, 1980, D.C. Law 3-95, § 103(a), 27 DCR 3509; June 11, 1982, D.C. Law 4-118, § 103, 29 DCR 1770; July 24, 1982, D.C. Law 4-130, § 2,

29 DCR 2412; Sept. 17, 1982, D.C. Law 4-150, § 102, 29 DCR 3377; Oct. 8, 1983, D.C. Law 5-32, § 3(a), (b), 30 DCR 4013; Sept. 26, 1984, D.C. Law 5-118, § 6(c), 31 DCR 4034; Mar. 14, 1985, D.C. Law 5-147, § 2(b), 31 DCR 6416; July 24, 1986, D.C. Law 6-129, § 2(a), 33 DCR 3221; June 24, 1987, D.C. Law 7-9, § 2(d), (e), 34 DCR 3283; Oct. 1, 1987, D.C. Law 7-29, § 2(c)(1)-(4), 34 DCR 5097; July 8, 1988, D.C. Law 7-130, § 2(a), 35 DCR 4104; Sept. 21, 1988, D.C. Law 7-145, § 2(a), 35 DCR 5407; July 26, 1989, D.C. Law 8-17, § 2(a), 36 DCR 4160; Mar. 20, 1992, D.C. Law 9-86, § 2, 39 DCR 716; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 3, 2001, D.C. Law 13-256, § 406, 48 DCR 730; Apr. 19, 2002, D.C. Law 14-114, §§ 292(a), 302(b)(1), 901(b)(1), 49 DCR 1468; June 25, 2002, D.C. Law 14-165, § 2(b)(1), 49 DCR 4261; Oct. 19, 2002, D.C. Law 14-213, § 33(r), 49 DCR 8140; Mar. 13, 2004, D.C. Law 15-105, § 107, 51 DCR 881; Oct. 20, 2005, D.C. Law 16-33, § 1291, 52 DCR 7503; Mar. 8, 2006, D.C. Law 16-59, § 2, 53 DCR 17; Mar. 14, 2007, D.C. Law 16-294, § 16, 54 DCR 1086; Apr. 24, 2007, D.C. Law 16-305, § 73(d), 53 DCR 6198; Sept. 23, 2009, D.C. Law 18-55, § 9(a)(2), 56 DCR 5703; Mar. 3, 2010, D.C. Law 18-111, § 7121, 57 DCR 181; Mar. 12, 2011, D.C. Law 18-316, § 2, 57 DCR 12416; Mar. 31, 2011, D.C. Law 18-331, § 4, 58 DCR 22; Sept. 14, 2011, D.C. Law 19-21, § 8152, 58 DCR 6226; Sept. 20, 2012, D.C. Law 19-168, §§ 7152, 8009(a), 59 DCR 8025; Sept. 26, 2012, D.C. Law 19-171, § 118, 59 DCR 6190; Mar. 5, 2013, D.C. Law 19-211, § 2(b), 59 DCR 13281; Apr. 20, 2013, D.C. Law 19-262, § 112, 60 DCR 1300.)

Section references. — This section is referenced in § 4-1701.01, § 42-2851.05, § 47-1806.06, § 47-1806.09, § 47-1809.10, § 47-1810.01, and § 47-1812.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-262 added (a)(2)(BB).

Legislative history of Law 19-262. — Law

19-262, the “Sustainable DC Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-756. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 16, 2013, it was assigned Act No. 19-615 and transmitted to Congress for its review. D.C. Law 19-262 became effective on Apr. 20, 2013.

Subchapter V. Returns.

§ 47-1805.04. Returns — Divulgence of information.

(a) *Information not to be disclosed.* — Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner the amount of income or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under § 47-1805.01 or information pertaining to the interception of any tax refund pursuant to the provisions of the Project Setoff Liability Act of 1982, and neither the original nor a copy of any such return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court; provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer of a copy of his return upon the payment of a fee of \$3.50. The provisions of this subsection shall also be applicable to any federal, state, or local income tax

returns or copies thereof and to any other federal, state, or local income tax information either submitted by the taxpayer or otherwise obtained; provided, further, that nothing in this section shall be construed to prevent public inspection of the application and its related financial documents of an organization that has been granted exemption from taxation under this chapter. Any inspection permitted under this subsection shall be made at such time and in such manner as the Mayor may prescribe.

(b) *Reciprocal exchange with the United States and the several states.* — Notwithstanding the provisions of this section, the Mayor may permit the proper officer of the United States or of any state imposing an income tax or his authorized representative to inspect income tax returns filed with the Mayor or may furnish to such officer or representative a copy of any such income tax returns provided the United States or such state grant substantially similar privileges to the Mayor or his representative or to the proper officer of the District charged with the administration of this subchapter. The Internal Revenue Service of the Treasury Department of the United States is authorized and required to supply such information as may be requested by the Mayor relative to any person subject to the taxes imposed by this chapter.

(c) *Publication of statistics and delinquent lists.* — Nothing contained in subsection (a) of this section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports and the items thereof, or the publication of delinquent lists showing the names of taxpayers who have failed to pay their taxes at the time and in the manner provided by law, together with any relevant information which in the opinion of the Mayor may assist in the collection of such delinquent taxes.

(d) *Information which may be disclosed.* — Nothing contained in subsection (a) of this section shall be construed to prohibit the Mayor, in his discretion, from divulging or making known any information contained in, or relating to, any report, application, license, or return required under the provisions of this chapter other than such information as may be contained therein relating to the amount of income or any particulars relating thereto or the computation thereof.

(e) *Violations.* — Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine of not more than the amount set forth in [§ 22-3571.01], by imprisonment for not more than 1 year, or both, in the discretion of the court. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia or any of his assistants in the name of the District of Columbia.

(f) *Preservation of reports, applications, and returns.* — All reports, applications, and returns received by the Mayor under the provisions of this chapter shall be preserved for 6 years, and thereafter until the Mayor orders them to be destroyed.

(g) *Disclosure to contractor.* — Notwithstanding the provisions of subsection (a) of this section, any tax returns or other tax information required by this chapter may be disclosed to a contractor to the extent necessary to provide for the processing, storage, transmission, or reproduction of such returns and

information or for the programing, maintenance, repair, testing, and procurement of equipment for purposes of tax administration. The provisions of subsections (a) and (e) of this section shall be applicable to all such contractors and former contractors and to their officers and employees and former officers and employees.

(h) *Disclosure to state agency requesting offset.* — Notwithstanding the provisions of this section, the social security account number and the home address of a taxpayer whose tax refund has been intercepted under § 47-1812.11 [repealed] and this section, shall be disclosed upon the request of the state agency requesting the offset and of the District of Columbia agency under Part D in Subchapter IV of the Social Security Act (42 U.S.C. § 651 et seq.).

(i) *Disclosure for paternity and support purposes.* — Notwithstanding any other provision of this section, the Mayor shall disclose, upon written or automated request, tax return or other related tax and revenue information to the agency that is responsible for administering or supervising the administration of the District's State Plan under title IV, part D, of the Social Security Act, approved January 4, 1975 (88 Stat. 2351; 42 U.S.C. § 651 et seq.), or the equivalent agency in another state. The Mayor shall only disclose a tax return or other related tax and revenue information that pertains to a support obligor or obligee, a person seeking a paternity, or support order, or a person against whom a paternity or support order is being sought. Tax return information that the Mayor obtains pursuant to a reciprocal exchange with a federal or state taxing authority shall be disclosed only with the consent of the taxing authority, to the extent that consent is required by federal law or the state law governing the taxing authority. Information shall be disclosed pursuant to this subsection only for purposes directly related to paternity establishment, or the establishment, modification, or enforcement of support order. For the purposes of this subsection, the term "support order" pertains to any obligation governed by § 46-201(15B) [now § 46-201(20)].

(j) *Disclosure to the Superior Court of the District of Columbia.* — Notwithstanding any other provision of this section, the Office of Tax and Revenue may furnish in accordance with § 11-1905 to the Superior Court of the District of Columbia, upon request of the Court, the names, addresses, and social security numbers of individuals who have filed a return under § 47-1805.02(a) [§ 47-1805.02(1)].

(k) *Disclosure to the United States District Court for the District of Columbia.* — Notwithstanding any other provision of this section, the Office of Tax Revenue may furnish to the United States District Court for the District of Columbia, upon request of the court and in accordance with 28 U.S.C. § 1863(d), the names, addresses, and social security numbers of individuals who have filed a return under § 47-1805.02(a).

(July 16, 1947, 61 Stat. 342, ch. 258, art. I, title V, § 4; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Mar. 16, 1978, D.C. Law 2-57, § 3, 24 DCR 5426; Mar. 6, 1979, D.C. Law 2-158, §§ 2, 4, 25 DCR 7002; June 11, 1982, D.C. Law 4-118, § 108, 29 DCR 1770; Sept. 18, 1982, D.C. Law 4-154, § 3, 29 DCR 3486; Feb. 24, 1987, D.C. Law 6-166, § 33(g)(2), 33 DCR 6710; enacted,

Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 3, 2001, D.C. Law 13-269, § 112(a), 48 DCR 1270; Dec. 9, 2004, D.C. Law 15-50, § 2(a), 50 DCR 8980; Apr. 13, 2005, D.C. Law 15-354, § 73(f), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 48(h)(2), 53 DCR 6794; July 7, 2009, D.C. Law 18-9, § 2, 56 DCR 3797; June 11, 2013, D.C. Law 19-317, § 286(h), 60 DCR 2064.)

Section references. — This section is referenced in § 47-820.01, § 47-903, and § 47-1812.08.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (e).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter VI. Tax on Residents and Nonresidents.

§ 47-1806.06. Tax on residents and nonresidents — Credits — Property taxes.

Section references. — This section is referenced in § 42-2851.02, § 47-857.01, and § 47-865.

Editor’s notes.

Section 2 of D.C. Law 19-283 would have rewritten (a)(1) and (a)(2); would have repealed (a)(3); would have rewritten (b)(4) and (b)(8)(B); would have repealed (b)(5), (b)(6), and (b)(7); would have rewritten (j)(1); and would have added (r).

Applicability of D.C. Law 19-283: Section 3 of D.C. Law 19-283 provided that the act shall apply as of January 1, 2014, upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Subchapter XVII. Qualified High Technology Companies.

§ 47-1817.01. Definitions.

Section references. — This section is referenced in § 2-1221.01, § 10-803.01, § 47-462, and § 47-1818.01.

CASE NOTES

Maintaining office, headquarters, or base of operations.

As a taxpayer had a sufficient number of employees performing qualifying high-technology work at a fixed location in a high-technology zone for a sufficiently extended period of time, it had maintained an office or base of operations in the District of Columbia within the meaning of D.C. Code § 47-1817.01(5)(A)(i) and was thus eligible for an exemption from the corporate franchise tax under this subchapter.

D.C. Office of Tax & Revenue v. BAE Sys. Enter. Sys., 56 A.3d 477, 2012 D.C. App. LEXIS 593 (2012).

To be eligible for an exemption from the franchise tax under this subchapter, a high-technology company need not exercise predominant authority, dominion, or control over an office or base of operations; it suffices if the company has a sufficient number of employees performing qualifying high-technology work at a fixed location in a high-technology zone for a

sufficiently extended period of time. D.C. Office of Tax & Revenue v. BAE Sys. Enter. Sys., 56 A.3d 477, 2012 D.C. App. LEXIS 593 (2012).

CHAPTER 20. GROSS SALES TAX.

Sec.

47-2002. Imposition of tax.

47-2014. Assumption or refund of tax by vendor unlawful; penalties.

Sec.

47-2018. Secrecy of returns; reciprocity.

§ 47-2002. Imposition of tax.

(a) A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as “retail sale” and “sale at retail” in this chapter). The rate of such tax shall be 6% of the gross receipts from sales of or charges for such tangible personal property and services, except that:

(1) The rate of tax shall be 18% of the gross receipts from the sale of or charges for the service of parking or storing of motor vehicles or trailers, except the service of parking or storing of motor vehicles or trailers on a parking lot owned or operated by the Washington Metropolitan Area Transit Authority and located adjacent to a Washington Metropolitan Area Transit Authority passenger stop or station;

(2)(A) The rate of tax shall be 10.05% of the gross receipts from the sale of or charges for any room or rooms, lodgings, or accommodations furnished to a transient by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients;

(B) If the occupancy of a room or rooms, lodgings, or accommodations is reserved, booked, or otherwise arranged for by a room remarketer, the tax imposed by this paragraph shall be determined based on the net charges and additional charges received by the room remarketer.

(3) The rate of tax shall be 9% of the gross receipts from the sale of or charges for:

(A) Food or drink prepared for immediate consumption as defined in § 47-2001(g-1);

(B) Spirituous or malt liquors, beers, and wine sold for consumption on the premises where sold; and

(C) Rental or leasing of rental vehicles and utility trailers as defined in § 50-1505.01;

(3A) The rate of tax shall be 10% of the gross receipts of the sales of or charges for spirituous or malt liquors, beers, and wine sold for consumption off the premises where sold;

(4) Repealed;

(4A) The rate of tax shall be 5.75% of the gross receipts from the sale of or charges for tangible personal property or services by legitimate theaters, or by entertainment venues with 10,000 or more seats, excluding any such theaters

or entertainment venues from which such taxes are applied to pay debt service on tax-exempt bonds;

(5) The rate of tax shall be 12% of the gross receipts from the sale of or charges for cigars, excluding premium cigars;

(6) The rate of tax shall be 12% of the gross receipts from the sale of or charges for other tobacco products; and

(7)(A) The rate of tax shall be 6% of the gross receipts from the sale of or charges for medical marijuana, as defined in the Legalization of Marijuana for Medical Treatment Initiative of 1999, transmitted on December 21, 2009 (D.C. Act 13-138) [Chapter 16B of Title 7].

(B) The proceeds of the tax collected under subparagraph (A) of this paragraph shall be deposited in the Healthy DC and Health Care Expansion Fund established by [§ 31-3514.02].

(b) Of the sales tax revenue received pursuant to this section, \$1,170,000 annually shall be used to fund the Reimbursable Detail Subsidy Program in the Alcoholic Beverage Regulation Administration.

(May 27, 1949, 63 Stat. 115, ch. 146, title I, § 125; May 18, 1954, 68 Stat. 117, ch. 218, title XIII, § 1303; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87-408, § 101(a); Sept. 30, 1966, 80 Stat. 856, Pub. L. 89-610, title III, § 301(a); Aug. 2, 1968, 82 Stat. 614, Pub. L. 90-450, title III, § 304; Oct. 31, 1969, 83 Stat. 170, Pub. L. 91-106, title I, § 104; Jan. 5, 1971, 84 Stat. 1932, Pub. L. 91-650, title II, § 201(a)(2); Aug. 29, 1972, 86 Stat. 643, Pub. L. 92-410, title III, § 301(a)(1), (2); Oct. 21, 1975, D.C. Law 1-23, title III, § 301(7), 22 DCR 2099; June 15, 1976, D.C. Law 1-70, title IV, § 408, 23 DCR 541; Mar. 6, 1979, D.C. Law 2-157, § 6, 25 DCR 6995; Sept. 13, 1980, D.C. Law 3-92, § 201(b), 27 DCR 3390; Sept. 26, 1984, D.C. Law 5-113, § 201(b), (c), 31 DCR 3974; July 26, 1989, D.C. Law 8-17, § 4(b), 36 DCR 4160; Sept. 10, 1992, D.C. Law 9-145, § 107(b), 39 DCR 4895; Sept. 30, 1993, D.C. Law 10-25, § 111(e), 40 DCR 5489; June 14, 1994, D.C. Law 10-128, § 104(b), 41 DCR 2096; Sept. 28, 1994, D.C. Law 10-188, § 302(a), 41 DCR 5333; May 16, 1995, D.C. Law 10-255, § 44, 41 DCR 5193; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Aug. 12, 1998, D.C. Law 12-142, § 3(c), 45 DCR 4826; June 5, 2003, D.C. Law 14-307, § 902(a), 49 DCR 11664; May 12, 2006, D.C. Law 16-94, § 2(b), 53 DCR 1649; Mar. 3, 2010, D.C. Law 18-111, § 7241(f), 57 DCR 181; Sept. 24, 2010, D.C. Law 18-223, § 7132, 57 DCR 6242; Apr. 8, 2011, D.C. Law 18-364, § 2(b), 58 DCR 976; Sept. 14, 2011, D.C. Law 19-21, §§ 7002(a)(2), 8032(b),; May 1, 2013, D.C. Law 19-310, § 3(a), 60 DCR 3410.)

Section references. — This section is referenced in § 9-1111.15, § 34-1803.02, § 38-821.02, § 47-2002.01, § 47-2002.02, § 47-2002.03, § 47-2002.05, § 47-2002.06, § 47-2002.07, § 47-2205, § 47-2402, § 47-2402.01, § 47-4603, § 47-4605, § 47-4607, § 47-4608, § 47-4622, § 47-4634, and § 50-2201.03.

Effect of amendments.

The 2013 amendment by D.C. Law 19-310 substituted "\$1,170,000" for "\$460,000" in (b).

Legislative history of Law 19-310. — Law

19-310, the "Omnibus Alcoholic Beverage Regulation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-824. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Signed by the Mayor on February 11, 2013, it was assigned Act No. 19-678 and transmitted to Congress for its review. D.C. Law 19-310 became effective on May 1, 2013.

§ 47-2014. Assumption or refund of tax by vendor unlawful; penalties.

It shall be unlawful for any vendor to advertise or hold out or state to the public or to any customer directly or indirectly that the reimbursement of tax or any part thereof to be collected by the vendor under this chapter will be assumed or absorbed by the vendor or that it will not be added to the selling price of the property sold or the taxable services rendered, or if added to said price that it, or any part thereof, will be refunded. Any person violating any provision of this section shall upon conviction be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 6 months, or both, for each offense.

(May 27, 1949, 63 Stat. 118, ch. 146, title I, § 134; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(i), 60 DCR 2064.)

Section references. — This section is referenced in § 47-2209.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2018. Secrecy of returns; reciprocity.

(a)(1) Except to any official of the District, having a right thereto in his official capacity, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner the amount of gross proceeds or tax due or any particulars relating thereto or the computation thereof set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of such litigation, whether or not the request is contained in an order of the court; provided, however, that nothing herein contained shall be construed to prevent the furnishing to a taxpayer a copy of his return upon the payment of a fee of \$3.50.

(2) The provisions of paragraph (1) of this subsection shall also apply to any state or local sales tax returns, copies thereof, and any other state or local sales tax information either submitted by the taxpayer or otherwise obtained. The provisions of paragraph (1) of this subsection shall not apply to any applications for exemption and their required related financial statements for persons which have been granted exemption under this chapter.

(3) Whenever it is necessary for the District to enter into contracts for the purpose of processing, storing, transmitting, or reproducing tax returns required by this chapter, such returns may be disclosed to the contractor to the extent needed in connection with the processing, storing, transmitting, or

reproducing of such tax returns. The provisions of subsections (a) and (d) of this section shall apply to all such contractors, their officers and employees, and to all such former contractors, former officers, and former employees.

(b) Nothing contained in subsection (a) of this section shall be construed to prohibit the publication of notices authorized in this chapter or the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof, or the publication of delinquent lists showing the names of persons, vendors, or purchasers who have failed to pay the taxes imposed by this chapter within the time prescribed herein, together with any relevant information which in the opinion of the Mayor may assist in the collection of such delinquent taxes.

(c) Nothing contained in subsection (a) of this section shall be construed to prohibit the Mayor, in his discretion, from divulging or making known any information contained in any report, application, or return required under the provisions of this chapter other than such information as may be contained therein relating to the amount of gross proceeds or tax thereon or any particulars relating thereto or the computation thereof.

(d) Any violation of the provisions of subsection (a) of this section shall be punishable by a fine of not more than the amount set forth in [§ 22-3571.01], or imprisonment for 1 year, or both, in the discretion of the court.

(e) Notwithstanding the provisions of this section, the Mayor may permit the proper officer of the United States or of any state or territory of the United States or his authorized representative to inspect the returns filed under this chapter, or may furnish to such officer or representative a copy of any such return, provided the United States, state, or territory grants substantially similar privileges to the Mayor or his representative or to the proper officer of the District charged with the administration of this chapter.

(f) All reports, applications, and returns received by the Mayor under the provisions of this chapter shall be preserved for 3 years and thereafter until the Mayor orders them to be destroyed.

(May 27, 1949, 63 Stat. 119, ch. 146, title I, § 138; Mar. 16, 1978, D.C. Law 2-57, § 4, 24 DCR 5426; July 24, 1982, D.C. Law 4-131, §§ 207, 223, 29 DCR 2418; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(j), 60 DCR 2064.)

Section references. — This section is referenced in § 47-2210.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (d).

Legislative history of Law 19-317. — See note to § 47-20141.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 21. CLOSING-OUT SALES.

Sec.
47-2106. Penalty for conducting false “closing-

out sales” and for violation of this chapter; prosecutions.

§ 47-2106. Penalty for conducting false “closing-out sales” and for violation of this chapter; prosecutions.

(a) Any person who shall advertise, hold, conduct, or carry on any sale of goods, wares, or merchandise under the description of closing-out sale or a sale of goods, wares, or merchandise damaged by fire, smoke, water, or otherwise, contrary to the provision of this chapter, or who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisonment for 90 days or both.

(b) Prosecutions for violations of this chapter and regulations promulgated under the authority of this chapter shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia or any of his assistants.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 1, 1959, 73 Stat. 450, Pub. L. 86-219, § 6; Oct. 5, 1985, D.C. Law 6-42, § 436, 32 DCR 4450; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 13, 2005, D.C. Law 15-354, § 73(g), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(k), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$300” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 24. CIGARETTE TAX.

Sec.
47-2406. Offenses relating to stamps.
47-2408. Records; reports; returns.

Sec.
47-2409. Seizure and forfeiture of property.
47-2421. Criminal penalties.

§ 47-2406. Offenses relating to stamps.

(a) No person shall, with intent to defraud, alter, forge, make, or counterfeit any stamps authorized by the Mayor under this chapter; or procure or cause to be altered, forged, made, or counterfeited any such stamps; or sell, transfer, buy, receive, have in his possession, or offer to sell, transfer, buy, or receive any such altered, forged, or counterfeited stamps; or make, use, sell, transfer, buy, receive, have in his possession, or procure or cause to be made or used any

equipment or material in imitation of the equipment or material used in the manufacture of such stamps.

(b) No person shall, with intent to defraud, cut, tear, or remove from any package of cigarettes, any stamp authorized by the Mayor under this chapter; or procure or cause to be cut, torn, or removed any such stamp; or sell, transfer, buy, receive, have in his possession, or offer to sell, transfer, buy, or receive any cut, torn, or removed stamp.

(c) No person shall, with intent to defraud, alter the cancellation of or otherwise prepare, or cause to be altered or otherwise prepared, any stamp which has already been used for the payment of the tax imposed by this chapter; or sell, transfer, buy, receive, have in his possession, or offer to sell, transfer, buy, or receive any such washed or restored stamp.

(d) No person shall, with intent to defraud, affix to any package of cigarettes, redeem, attempt to affix or redeem, or cause to be affixed or redeemed:

(1) Any stamp which has been cut, torn, or removed from any package of cigarettes;

(2) Any altered, forged, or counterfeited stamp; or

(3) Any washed or restored stamp.

(e) No person shall willfully sell, transfer, buy, receive, have in his possession, or offer to sell, transfer, buy, or receive any package of cigarettes to which is affixed a stamp described in subsection (d) of this section.

(f) Any person who violates any provision of this section shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 5 years, or both.

(May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 607; Mar. 10, 1982, D.C. Law 4-71, § 2, 28 DCR 5243; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(l), 60 DCR 2064.)

Section references. — This section is referenced in § 47-2409.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000” in (f).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2408. Records; reports; returns.

(a) The Mayor may require licensed wholesalers, retailers, vending machine operators, and every other person liable for or exempt from the tax imposed by this chapter or otherwise subject to the provisions of this chapter or the regulations issued by the Mayor pursuant to this chapter, to keep, maintain, and preserve records, books, and other documents; to file reports, statements, and returns; and to comply with such regulations relating thereto as the Mayor may prescribe. The Mayor may require that any reports, statements, or returns be verified by oath. The records, books, and other documents which the Mayor requires to be kept, maintained, and preserved shall be made available

for examination and copying by the Mayor at the place or places prescribed by him at the time specified in subsection (b) of this section.

(b) For purposes of ascertaining the correctness of any report, statement, or return; making a report, statement, or return where a complete and accurate report, statement, or return has not been filed; determining that all taxes due under this chapter have been properly paid; and determining compliance with the provisions of this chapter and the regulations issued hereunder, the Mayor may:

(1) Examine and copy any records, books, or other documents which may be relevant to such inquiry;

(2) Summon any person to appear before him at the time and place specified in the summons and produce such records, books, or other documents and give such testimony and answer such interrogatories, under oath, as may be relevant to such inquiry;

(3) Upon presenting appropriate credentials to the owner, operator, or agent in charge, enter any building or place during the usual business hours or any other time when such building or place is open:

(A) Where required records, books, or other documents are kept, maintained, or preserved for purposes of examining and copying such records, books, or other documents; and

(B) Where cigarettes are manufactured, kept for sale, offered for sale, or sold by a licensed wholesaler, retailer, or vending machine operator; and

(4) Stop any conveyance that the Mayor has knowledge or reasonable cause to believe is carrying more than 200 cigarettes and, upon presenting appropriate credentials to the operator thereof, examine the invoices or delivery tickets for such cigarettes and inspect the conveyance for contraband cigarettes.

(c) Any owner, operator, or agent in charge of any building or place where required records, books, or other documents are kept, maintained, or preserved or where cigarettes are manufactured, kept for sale, offered for sale, or sold by a licensed wholesaler, retailer, or vending machine operator who refuses to permit the Mayor, acting under the authority of subsection (b)(3) of this section, to enter and examine such records, books, or other documents or to inspect such cigarettes, or who obstructs, impedes, or interferes with the Mayor while he is engaged in the performance of his official duties under subsection (b)(3) of this section shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 1 year, or both.

(d) Any person who, having been summoned, neglects or refuses to obey the summons issued as herein provided, shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 1 year, or both. If any person, having been summoned, neglects or refuses to obey the summons issued as herein provided, the Mayor may report that fact to the Superior Court of the District of Columbia, or 1 of the judges thereof, and that Court, or any judge thereof, is empowered to compel obedience of such summons to the same extent and under the same penalties as witnesses may be compelled to obey the subpoenas of that Court. Any failure to obey the order of the Court may be punished by the Court as a contempt thereof.

(e) No person shall willfully file an application for a license, permit, authorization, or refund; request for revision or abatement; claim for refund or allowance; or report, statement, or return; or keep or maintain any records, books, or other documents which are known to him to be false or fraudulent as to any material matter. No person shall willfully aid or assist in, or procure, counsel, or advise, the preparation, filing, or keeping of any applications, requests, claims, reports, statements, returns, records, books, or other documents which are false or fraudulent as to any material matter.

(f) Any person required to file any report, statement, or return or to keep, maintain, and preserve any records, books, or other documents, who fails to file a complete and accurate report, statement, or return on or before the date that such report, statement, or return is due (determined with regard to any extension of time for filing granted by the Mayor) or who fails to keep, maintain, and preserve complete and accurate records, books, or other documents, unless it is shown by such person that such failure is due to reasonable cause and not to neglect, shall pay a penalty of \$10 for each day during which such failure continues. The provisions of §§ 47-412 [repealed] and 47-413 [repealed] shall be applicable to the tax imposed by this chapter, but the period of limitations upon assessment and collections shall be determined by § 47-4301.

(g) If any person required to keep, maintain, and preserve any records, books, or other documents relating to exempt sales or possessions of cigarettes fails to keep, maintain, and preserve complete and accurate records, books, or other documents relating thereto, such sales and possessions shall, unless it is shown by such person that failure is due to reasonable cause and not to neglect, be deemed taxable sales and possessions.

(h) The Mayor may, upon written application made before the date prescribed for filing any report, statement, or return, grant a reasonable extension of time for filing the report, statement or return required by this chapter, whenever good cause exists for such extension.

(May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 609; Mar. 10, 1982, D.C. Law 4-71, § 2, 28 DCR 5243; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 9, 2001, D.C. Law 13-305, § 406(rr), 48 DCR 334; June 11, 2013, D.C. Law 19-317, § 286(m), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than \$1,000" in (c) and (d).

Legislative history of Law 19-317. — See note to § 47-2406.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2409. Seizure and forfeiture of property.

(a) The following shall be subject to seizure by the Mayor or any law enforcement officer of the District and to forfeiture to the District:

(1) All cigarettes or other tobacco product found in any place in the District at such times and under such circumstances that the taxes levied and

imposed by this chapter should have been paid and on which such taxes have not been paid as required by this chapter or which do not bear proper evidence that such taxes have been paid;

(2) All cigarettes or other tobacco product, conveyances, and equipment or devices subject to seizure and forfeiture under § 47-2405;

(3) All cigarettes or other tobacco product manufactured for sale, kept for sale, offered for sale, displayed for sale, or sold in violation of § 47-2404 or the terms and conditions of a license issued under such section and all money collected in connection with the sale of such cigarettes or other tobacco product;

(4) All unstamped or improperly stamped cigarettes or other tobacco product possessed or sold by licensed retailers or vending machine operators in violation of § 47-2402(e);

(5) All cigarette tax stamps possessed by licensed retailers and vending machine operators in violation of § 47-2402(e) or sold or transferred, or offered for sale or transfer, in violation of § 47-2402(i);

(6) All vending machines which are operated in violation of § 47-2404 or the terms and conditions of a license under such section or which contain cigarettes or other tobacco product described in paragraph (1) of this subsection, including all cigarettes or other tobacco product, whether described in paragraph (1) of this subsection or not, and money contained therein;

(7) All altered, forged, counterfeited, cut, torn, removed, prepared, washed, or restored stamps as described in § 47-2406; all cigarettes or other tobacco product to which such stamps are affixed and all materials and equipment used, or intended to be used, to manufacture or produce such stamps;

(8) All metering devices possessed with authorization from the Mayor and used or possessed in violation of the terms and conditions imposed by the Mayor;

(9) All raw materials or equipment of any kind which are used, or intended for use, in manufacturing or packaging cigarettes or other tobacco product in violation of this chapter;

(10) All property which is used, or intended for use, as a container for property described in paragraph (1), (3), (4), (5), or (7) of this subsection;

(11) All books or records used, or intended for use in violation of this chapter;

(12) All money which has been used, or is intended for use, in violation of this chapter; and

(13) All conveyances, including aircraft, vehicles, or vessels, or any other property which are used to transport or conceal, or intended for use in transporting or concealing, or in any manner used to facilitate the transportation or concealment of, property described in paragraphs (1), (3), (4), (7), and (9) of this subsection.

(b) The following conveyances shall not be subject to forfeiture under this section:

(1) A conveyance used by any person as a common carrier in the transaction of business as a common carrier, unless it appears that the owner or other person in charge of the conveyance was a consenting party, or privy to the violation of this chapter on account of which the conveyance was seized; or

(2) A conveyance that is subject to seizure and forfeiture under this section by reason of any act committed, or omission established by the owner thereof, to have been committed or omitted by any person other than such owner, while such conveyance was unlawfully in the possession of a person other than the owner, in violation of the criminal laws of the United States, the District, or any other state.

(c) All property which is seized under subsection (a) of this section shall be promptly delivered to the Mayor and placed under seal, or removed to a place designated by the Mayor. Such property shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Attorney General for the District of Columbia or any of his assistants and shall, unless good cause be shown to the contrary, be forfeited to the District; provided, that such property shall not be subject to replevin, but is deemed to be in the custody of the Mayor subject only to the orders, decrees, and judgments of the court having jurisdiction over the forfeiture proceedings, and; provided, further, that notwithstanding the provisions of this section, whenever such property is subject to seizure and forfeiture on account of failure to comply with the provisions of this chapter and the Mayor determines that such failure was excusable, the Mayor may return the property to the owner or owners thereof. Whenever the Mayor determines that any property seized under subsection (a) of this section is liable to perish or become greatly reduced in price or value by keeping such property until the completion of forfeiture proceedings, the Mayor may:

(1) Appraise the property and return the property to the owner thereof upon the owner paying any tax due under this chapter and giving satisfactory bond in an amount equal to the appraised value to abide the final order, decree, or judgment of the court having jurisdiction over the forfeiture proceedings, and to pay the amount of such appraised value to the Mayor as may be ordered and directed by such court; or

(2) If the owner neglects or refuses to pay such tax and give such bond, sell such property in the manner provided by the Mayor by regulation, and the proceeds of the sale of such property, after deducting the reasonable costs of the seizure and sale, shall be paid to the court to abide its final order, decree, or judgment.

(d) After the final order, decree, or judgment is made, forfeited property shall be made available for the official use of any agency of the District government, disposed of by public auction, or otherwise disposed of as the Mayor may prescribe. If there is a bona fide prior lien against such forfeited property, the Mayor may (1) make payment of such lien and retain the property for official use, or (2) dispose of such property by public auction, and the proceeds of the sale of such property shall be made available, first, for the payment of any tax due under this chapter and all expenses incident to the seizure, forfeiture, and sale of such property, and, second, for the payment of such lien, and the remainder shall be deposited with the Treasurer of the District of Columbia; provided, that no payment of a lien shall be made where the lienor was a consenting party or privy to the violation of this chapter on account of which the property was seized and forfeited. To the extent necessary,

liens against forfeited property shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

(e) Whenever any cigarettes or other tobacco product are found in any vending machine in violation of the provisions of § 47-2402(g), the Mayor shall seal the machine to prevent the sale or removal of any cigarettes or other tobacco product from the machine until such time as the violation is corrected in the presence of the Mayor. The operator of such vending machine shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 1 year, or both; provided, that if the vending machine contains cigarettes or other tobacco product described in paragraph (1) of subsection (a) of this section, the operator shall, in addition, be subject to the penalties imposed by the other provisions of this chapter. Any person, other than the Mayor, who removes or otherwise tampers with any seals placed on a vending machine by the Mayor shall be subject to the penalties imposed by § 47-2414 [repealed].

(f) Any person whose property has been seized and forfeited under this section shall not be relieved from any other penalty imposed by this chapter.

(May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 610; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); Mar. 3, 1979, D.C. Law 2-139, § 3205(r), 25 DCR 5740; Mar. 10, 1982, D.C. Law 4-71, § 2, 28 DCR 5243; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 13, 2005, D.C. Law 15-354, § 73(i)(1), 52 DCR 2638; July 23, 2010, D.C. Law 18-189, § 4(c), 57 DCR 3019; June 11, 2013, D.C. Law 19-317, § 286(n), 60 DCR 2064.)

Section references. — This section is referenced in § 1-636.02, § 7-1803.06, § 47-2405, and § 47-2423.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (e).

Legislative history of Law 19-317. — See note to § 47-2406.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2421. Criminal penalties.

Any person who commits any of the acts prohibited by § 47-2419, either knowingly or having reason to know he is doing so, or who fails to comply with any of the requirements of § 47-2420, shall, upon conviction thereof, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 3 years, or both.

(Apr. 3, 2001, D.C. Law 13-225, § 2(c), 48 DCR 35; June 19, 2001, D.C. Law 13-313, § 16(c)(2), 48 DCR 1873; Apr. 13, 2005, D.C. Law 15-354, § 73(i)(3), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(o), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000”.

Legislative history of Law 19-317. — See note to § 47-2406.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses

committed on or after June 11, 2013.

CHAPTER 27. PERMITS AND FEES.

Subchapter I. Public Auction Permits

Sec.

47-2707. Prosecutions.

Subchapter I. Public Auction Permits.

§ 47-2707. Prosecutions.

All prosecutions under this subchapter shall be in the Superior Court of the District of Columbia upon information by the Attorney General for the District of Columbia or 1 of his assistants. Any person violating any of the provisions of this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$10 and not more than the amount set forth in [§ 22-3571.01] or imprisonment of not more than 60 days or both, in the discretion of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of this subchapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this subchapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 465, 32 DCR 4450; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 13, 2005, D.C. Law 15-354, § 73(k), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(p), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in [§ 22-3571.01]" for "nor more than \$200".

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 28. GENERAL LICENSE LAW.

Subchapter I. Specific Licensing Provisions

- Sec.
 47-2808. Auctioneers; temporary licenses; penalty for failure to account.
 47-2811. Massage establishments; Turkish, Russian, or medicated baths.
 47-2832.02. Tire dealers.
 47-2839.01. Security agencies.
 47-2846. Penalties.
 47-2850. Rules governing the business of furnishing towing services for motor vehicles.

Subchapter I-A. General Provisions

- 47-2851.09. License expiration date.
 47-2851.10. Lapsed and reinstated licenses.

Subchapter I-B. Non-Health Related Occupations and Professions Licensure

- 47-2853.06. Establishment of boards.
 47-2853.12. License, certification, and registration criteria; waiver.
 47-2853.27. Fines and penalties; criminal violations.

Part D-i

Body Artists

- 47-2853.76e. Prohibitions and penalties.

Part I

Plumbers or Gasfitters

- 47-2853.122. Eligibility requirements.

Part Q

Refrigeration and Air Conditioning Mechanics

- Sec.
 47-2853.202. Eligibility requirements.

Subchapter IV. Other Licenses

Part A

Home Improvement Businesses

- 47-2883.04. Penalty.

Part B

Pawnbrokers

- 47-2884.16. Penalties for violation of part; loan declared void; pledge returned.

Part C

Pharmacy

- 47-2885.20. Penalties; prosecutions; injunction.

Part D

Professional Engineers

- 47-2886.14. Unlawful acts.

Part E

Athlete Agents

- 47-2887.14. Criminal penalties; prosecution by Attorney General.

*Subchapter I. Specific Licensing Provisions.***§ 47-2808. Auctioneers; temporary licenses; penalty for failure to account.**

(a) Auctioneers shall pay a license fee of \$222 per annum.

(b) The Mayor may issue a temporary auctioneer license to a person, firm, partnership, association, organization, or corporation engaged in or existing for charitable, benevolent, eleemosynary, humane, religious, philanthropic, recreational, social, educational, civic, fraternal, or other nonprofit purpose and to a citizen-service program established pursuant to [§ 1-1163.38]. The fee for a temporary auctioneer license shall be \$50. A temporary auctioneer license shall be valid for a period of not more than 7 calendar days as specified on the face of the license. The Mayor may amend the fee to be charged for a temporary auctioneer license to an amount not to exceed the reasonably estimated cost of performing administrative duties pertaining to the issuance of this license in accordance with the provisions of subchapter I of Chapter 5 of Title 2.

(c) No license shall issue hereunder without the approval of the Chief of Police. If any licensed auctioneer or any holder of a temporary auctioneer license, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within 5 days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the Superior Court of the District of Columbia shall be fined not more than the amount set forth in [§ 22-3571.01] or be imprisoned not exceeding 6 months, or both, in the discretion of the court. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this section, or any rules or regulations issued under the authority of this section, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2. Nothing herein contained shall be construed to repeal or alter the provisions of subchapter I of Chapter 27 of this title.

(d) Any permit issued pursuant to this section shall be issued as an Inspected Sales and Services endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of this chapter.

(July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 9; July 1, 1932, 47 Stat. 552, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Sept. 14, 1976, D.C. Law 1-82, title I, § 104(c), 23 DCR 2461; Oct. 5, 1985, D.C. Law 6-42, § 469(a), 32 DCR 4450; Feb. 24, 1987, D.C. Law 6-181, § 2, 33 DCR 7664; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 20, 1999, D.C. Law 12-261, § 2003(pp)(7), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(hh)(4)(A), 50 DCR 6913; Apr. 27, 2012, D.C. Law 19-124, § 501(n)(2), 59 DCR 1862; June 11, 2013, D.C. Law 19-317, § 286(q), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2811. Massage establishments; Turkish, Russian, or medicated baths.

(a) No person shall offer or administer for commercial purposes a massage unless licensed pursuant to Chapter 12 of Title 3.

(b) Repealed.

(July 1, 1902, 32 Stat. 624, ch. 1352, § 7, par. 11; July 1, 1932, 47 Stat. 552, ch. 366; Sept. 14, 1976, D.C. Law 1-82, title I, § 104(e), 23 DCR 2461; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 20, 1999, D.C. Law 12-261, § 2003(pp)(9), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 3(hh)(4)(C), 50 DCR 6913; Dec. 10, 2009, D.C. Law 18-88, § 224, 56 DCR 7413; June 19, 2013, D.C. Law 19-320, § 511, 60 DCR 3390.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 repealed (b), which read: "Any license issued pursuant to this section shall be issued as a Public Health: Public Accommodations endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of this chapter."

Legislative history of Law 19-320. — Law

19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 47-2820. Theaters, moving pictures, skating rinks, dances, exhibitions, lectures, entertainments; assignment of police and firemen and additional fees based thereon; hours minors are prohibited on premises.

CASE NOTES

Security guards.

Although police officers sought to secure off-duty employment as security guards at a newly opened mall, the District of Columbia's Metropolitan Police Department was authorized by

D.C. Code § 47-2820(b) to contract directly with a mall to provide police officers to staff a security detail at the mall in return for a monthly permit fee. *Freeman v. D.C.*, 60 A.3d 1131, 2012 D.C. App. LEXIS 520 (2012).

§ 47-2829. Vehicles for hire; identification tags on vehicles; vehicles for school children; ambulances, private vehicles for funeral purposes; issuance of licenses; payment of fees.

Section references. — This section is referenced in § 7-1703, § 34-912, § 47-2313, § 47-2853.04, § 50-320, § 50-331, § 50-1401.01, and § 50-1501.03.

Editor's notes.

Section 3 of D.C. Law 19-270 would have added (j)(4) and (j)(5).

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 47-2832.02. Tire dealers.

(a) The owners or managers of establishments where waste tires are generated shall pay a license fee as established by the Mayor.

(b) Any license for a waste tire generator issued under this chapter shall be issued as a General Services and Repair endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of this chapter.

(c) No license shall be issued to any waste tire generator that fails to provide the Mayor with information concerning the site's location, size, and the approximate number of waste tires that have been accumulated at the site, which may not exceed 500.

(d)(1) The Mayor, pursuant to [subchapter I of Chapter 2 of Title 5, § 2-501 et seq.], shall issue rules pertaining to the collection and storage of waste tires, which shall include:

- (A) A prohibition on outdoor storage of waste tires;
- (B) Methods of collection, storage, and processing of waste tires; and
- (C) Record-keeping procedures for waste tire generators.

(2) The methods of collection, storage, and processing of waste tires shall consider the general location of waste tires being stored with regard to property boundaries and buildings, pest control, accessibility by firefighting equipment, and other considerations as they relate to public health and safety.

(3) The record-keeping procedures for waste tire generators shall include the source and number or weight of tires received and the destination and number of tires or weight of tires or tire pieces shipped or otherwise disposed of. The records shall be maintained for at least 3 years following the end of the calendar year of such activity. Record keeping shall not be required for any charitable, fraternal, or other type of nonprofit organization or association that conducts programs that result in the voluntary cleanup of land, water resources, or collection for disposal of waste tires.

(e) For the purposes of this section, the term:

(1) "Waste tire" means any automobile, motorcycle, heavy equipment, or truck tire stored or offered for sale by a waste tire generator or otherwise retained by a waste tire generator after having replaced a customer's tire with a new or used tire.

(2) "Waste tire generator" means any person who buys, sells, or stores new or used tires for use on automobiles, motorcycles, heavy equipment, or trucks and which retains any of the customer's used tires after replacement.

(Apr. 23, 2013, D.C. Law 19-279, § 2, 60 DCR 2122.)

Legislative history of Law 19-279. — Law 19-279, the "New and Used Tire Dealer License Act of 2012," was introduced in Council and assigned Bill No. 19-583. The Bill was adopted on first and second readings on Dec. 4, 2012 and

Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25, 2013, it was assigned Act No. 19-644 and transmitted to Congress for its review. D.C. Law 19-279 became effective on April 23, 2013.

§ 47-2839.01. Security agencies.

(a) For the purpose of this section, the term:

(1) "Campus police officer" means an individual appointed under § 5-129.02, and subject to the requirements of Chapter 12 of Title 6A of the District of Columbia Municipal Regulations [Regulations].

(2) "Security agency" means a person who conducts a business that provides security services.

(3) "Security officer" means an individual appointed under § 5-129.02, and shall have the same meaning as provided in section 2100 of Title 17 of the District of Columbia Municipal Regulations.

(4) "Security services" means any activity that is performed for compensation by a security officer or special police officer to protect an individual or property.

(5) "Special police officer" means an individual appointed under § 5-129.02, and subject to the requirements of Chapter 11 of Title 6A of the District of Columbia Municipal Regulations.

(b) It shall be unlawful for any person to engage in the business of operating, managing, or conducting a security agency, for profit or gain, or to advertise or represent his or her business to be that of a security agency, or that of conducting, managing, or operating a security agency, without first obtaining a license to do so.

(c) A person who violates any provision of this section, or the provisions of Chapter 21 of Title 17 of the District of Columbia Municipal Regulations pertaining to security agencies, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment of not more than one year, or both.

(d)(1) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, may issue rules to implement the provisions of this section.

(2) The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 45-day review period, the proposed rules shall be deemed approved.

(e) Any license issued pursuant to this section shall be issued as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of this chapter.

(Nov. 16, 2006, D.C. Law 16-187, § 203(b), 53 DCR 6722; Mar 25, 2009, D.C. Law 17-353, § 127(a), 56 DCR 1117; June 11, 2013, D.C. Law 19-317, § 286(r), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than \$1,000" in (c).

Legislative history of Law 19-317. — See note to § 47-2808.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2846. Penalties.

Any person violating any of the provisions of this chapter, or additions thereto made from time to time by the Council of the District of Columbia, where no specific penalty is fixed, or the violation of any regulation made by the Council under the authority of this chapter, shall upon conviction be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 90 days. Any person failing to file any information required by this chapter, or by any regulation of the Council made under the provisions hereof, or who in filing any such information makes any false or misleading statement, shall upon conviction be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 90 days. Civil fines, penalties,

and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 48; July 1, 1932, 47 Stat. 563, ch. 366; Oct. 5, 1985, D.C. Law 6-42, § 469(b), 32 DCR 4450; Apr. 30, 1988, D.C. Law 7-104, § 43(g), 35 DCR 147; Mar. 8, 1991, D.C. Law 8-237, § 28, 38 DCR 314; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(s), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$300” twice.

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-2850. Rules governing the business of furnishing towing services for motor vehicles.

(a) The Mayor is authorized, in accordance with [subchapter I of Chapter 5 of Title 2], to:

(1) Promulgate rules to govern the business of furnishing towing services for motor vehicles; and

(2) Amend or repeal any provision of chapter 4 of Title 16 of the District of Columbia Municipal Regulations governing the business of furnishing towing services for motor vehicles.

(b) Rules proposed pursuant to this section shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed regulations, in whole or in part, by resolution, within this 45-day review period, the proposed regulations shall be deemed disapproved.

(c)(1) Any person who violates any of the rules promulgated pursuant to this section shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine of not more than the amount set forth in [§ 22-3571.01] per violation, imprisonment for not more than [than] 90 days, or both.

(2) All prosecutions for violations of any rule or regulation issued pursuant to this section shall be in the Criminal Division of the Superior Court of the District of Columbia in the name of the District of Columbia by information signed by the Attorney General or one of his or her assistants.

(3) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the rules issued pursuant to this section, pursuant to Chapter 18 of Title 2. Adjudication of any infractions shall be pursuant Chapter 18 of Title 2.

(Apr. 5, 2005, D.C. Law 15-279, § 2, 52 DCR 841; June 11, 2013, D.C. Law 19-317, § 286(t), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$1,000” in (c)(1).

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter I-A. General Provisions.

§ 47-2851.09. License expiration date.

(a)(1) The Center shall assign an expiration date for each basic business license. All renewable licenses endorsed on that basic business license shall expire on that date.

(2) Notwithstanding any other provision of law, every license issued in accordance with this subchapter shall be valid for either 2 or 4 years from the date of issue, depending on which license term the applicant selects, unless earlier revoked or voluntarily relinquished, and licenses shall be issued on a staggered basis, using as the renewal date the date of incorporation if the business is incorporated, the date of organization if the business is unincorporated, or the birth date of the principal if the business is a sole proprietorship. The fee charged for a 4-year license renewal shall be twice that of a 2-year license renewal.

(3) Valid licenses that for any reason expire on a date other than a date determined in accordance with paragraph (2) of this subsection shall be extended automatically until the next anniversary of the date determined in accordance with paragraph (2) of this subsection.

(b) All renewable licenses endorsed on a basic business license shall be renewed by the Center under conditions originally imposed unless a regulatory agency advises the Center of conditions or denials to be imposed before the endorsement is renewed.

(Apr. 29, 1998, D.C. Law 12-86, § 101(b), 45 DCR 1172; Apr. 20, 1999, D.C. Law 12-261, § 2002(b), 46 DCR 3142; Oct. 28, 2003, D.C. Law 15-38, § 2(k), 50 DCR 6913; Apr. 23, 2013, D.C. Law 19-277, § 2(a), 60 DCR 2117.)

Section references. — This section is referenced in § 47-2805.01, § 47-2851.05, and § 47-2851.15.

Effect of amendments.

The 2013 amendment by D.C. Law 19-277 rewrote (a)(2).

Legislative history of Law 19-277. — Law 19-277, the “Basic Business License Renewal

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-825. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 25, 2013, it was assigned Act No. 19-642 and transmitted to Congress for its review. D.C. Law 19-277 became effective on April 23, 2013.

§ 47-2851.10. Lapsed and reinstated licenses.

(a) The Department may, by electronic mail or other methods of communication, send notice of impending license expiration, an application for renewal, and a statement of the applicable renewal fee to each licensee within 60 days prior to the expiration date at the mailing address or electronic mail address shown on the Department’s records for the licensee. It shall be the responsi-

bility of the licensee to update the address information maintained by the Department.

(b)(1) A license that has not been revoked, suspended, or voluntarily relinquished and that has not been renewed by its expiration date shall be deemed to be lapsed. A licensee may apply for renewal of the license at any time within 30 days after the lapsing of the license and the license shall be reinstated upon the payment of a penalty of \$250, plus all other applicable fees or penalties provided by law.

(2) A license that is lapsed for more than 30 days shall be deemed to be expired. A licensee whose license is lapsed for more than 30 days, but less than 6 months, after the lapsing of the license may apply for renewal of the license and the license shall be reinstated upon the payment of a penalty of \$500, plus all other applicable fees and penalties provided by law.

(c)(1) Repealed.

(2) A licensee whose license has been expired for at least 6 months shall be treated as a new applicant and not as an applicant for renewal, unless otherwise provided by applicable law. If the new applicant conducted business during the 6 months after the expiration date of the license without complying with the renewal procedures pursuant to this section, the applicant shall be deemed to have conducted business without a license and shall be liable for any and all fees and fines applicable to conducting business without a license. A new application for a license shall not be processed until all applicable fines and fees have been paid.

(d) Any person who has obtained a license or renewed a license under false pretenses, including paying fees with a bad check, stating falsely that corporate status is current, or stating falsely that all taxes owed the District have been paid, shall be notified immediately of the problem and given 30 days from the date of notice to provide proof of having cured the problem. If the problem has not been corrected 30 days from the date of notification, the license shall be revoked and may only be reinstated upon proof of correction and payment of a \$500 fine in addition to any other fees and fines required by this subchapter and all other relevant District laws and regulations.

(Apr. 29, 1998, D.C. Law 12-86, § 101(b), 45 DCR 1172; Apr. 20, 1999, D.C. Law 12-261, § 2002(i), 46 DCR 3142; Mar. 3, 2010, D.C. Law 18-111, § 2041(b), 57 DCR 181; Apr. 23, 2013, D.C. Law 19-277, § 2(b), 60 DCR 2117.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-277 substituted "60 days" for "30 days" in (a).

Legislative history of Law 19-277. — See

note to § 47-2851.09.

Subchapter I-B. Non-Health Related Occupations and Professions Licensure.

§ 47-2853.06. Establishment of boards.

(a) There is established a Board of Architecture and Interior Designers to consist of 7 members of whom 3 shall be architects, 3 shall be interior designers

and one shall be a consumer member. The Board shall regulate the practice of architecture and the practice of interior design.

(b)(1) There is hereby established a Board of Accountancy to consist of 5 members. Of the members of the Board, one shall be a consumer member and 4 shall be licensed as certified public accountants who, at the time of their appointments, have been engaged in the practice of public accountancy as certified public accountants in the District for a period of not less than 5 years. The Board shall regulate the practice of public accountants and certified public accountants.

(2) The standards of attestation specified in § 47-2853.41(1) shall be adopted by reference by the Board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations, such as the American Institute of Certified Public Accountants and the Public Company Accounting Oversight Board.

(c) There is established a Board of Barber and Cosmetology consisting of 14 members of whom 3 shall be barbers, 3 shall be cosmetologists, 3 shall be specialty cosmetologists, 3 shall be body artists, and 2 shall be consumer members. The Board shall regulate the practice of barbers, body artists, and cosmetologists, including specialty cosmetology practices such as braiding, electrolysis, esthetics, manicuring and others as the Mayor may from time to time establish by rule, instructors and managers of these practices, and owners of such facilities.

(d) There is established a Board of Industrial Trades consisting of 15 members, of whom 3 shall be plumbers licensed in the District, 2 shall be electricians licensed in the District, 2 shall be refrigeration and air conditioning mechanics licensed in the District, 2 shall be steam and other operating engineers licensed in the District, 2 shall be asbestos workers, one shall be an elevator mechanic licensed in the District, one shall be an elevator inspector licensed in the District, one shall be an elevator contractor licensed in the District, and one shall be a consumer member. The Board of Industrial Trades shall regulate the practice of plumbers, gasfitters, electricians, refrigeration and air conditioning mechanics, steam and other operating engineers, asbestos workers, elevator mechanics, elevator inspectors, except for those employed by the District of Columbia or by the Washington Metropolitan Area Transit Authority, and elevator contractors. The Board may establish bonding and insurance requirements, subcategories of licensure, education, and experience requirements for licensure, and other requirements.

(e) There is established a Board of Professional Engineering consisting of 7 members of whom 4 shall be professional engineers licensed in the District in various disciplines, 2 shall be land surveyors licensed in the District, and one shall be a consumer member. The Board shall regulate the practice of professional engineers and land surveyors.

(f) There is established a Board of Funeral Directors consisting of 5 members of whom 4 shall be funeral directors licensed in the District and one shall be a consumer member. The Board shall regulate the practice of funeral directors.

(g) There is established a Board of Real Estate Appraisers consisting of 5 members, of whom 3 shall be real estate appraisers licensed and in good

standing in the District with not less than 3 years experience in real estate appraising immediately preceding his or her appointment to the Board, one of whom shall be a real estate broker licensed and in good standing in the District, and one shall be a consumer member. The Board shall regulate the practice of real estate appraisal, including the functions of a state appraiser certifying and licensing agency under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, approved August 9, 1989 (103 Stat. 511; 12 U.S.C. §§ 3331 through 3351).

(h) There is established a Board of Real Estate consisting of 9 members of whom 3 shall be real estate brokers licensed in the District, 2 shall be real estate salespersons licensed in the District, 2 shall be property managers licensed in the District, one shall be an attorney admitted to the bar of the District of Columbia and engaged in the practice of real estate law, and one shall be a consumer member. All members of the Board shall be residents of the District during their tenure. The Board shall regulate the practices of real estate brokers, real estate salespersons, and property managers.

(Apr. 20, 1999, D.C. Law 12-261, § 1002, 46 DCR 3142; June 16, 2006, D.C. Law 16-130, § 2(b), 53 DCR 4718; Mar. 3, 2010, D.C. Law 18-111, § 2151(c), 57 DCR 181; Dec. 2, 2011, D.C. Law 19-43, § 2(b), 58 DCR 8928; Oct. 23, 2012, D.C. Law 19-193, § 3(d), 59 DCR 10388; Apr. 23, 2013, D.C. Law 19-271, § 2(a), 60 DCR 1727.)

Section references. — This section is referenced in § 1-523.01, § 47-2853.02, § 47-2853.41, and § 47-2853.221.

Effect of amendments.

The 2013 amendment by D.C. Law 19-271 added “3 shall be body artists” in the first sentence of (c).

Legislative history of Law 19-271. — Law 19-271, the “Regulation of Body Artist and

Body Art Establishments Clarifying Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-920. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec 18, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-633 and transmitted to Congress for its review. D.C. Law 19-271 became effective on April 23, 2013.

§ 47-2853.12. License, certification, and registration criteria; waiver.

(a) A person applying for licensure, certification, or registration under this subchapter shall establish to the satisfaction of the Mayor that the person:

(1) Has not been convicted of an offense which bears directly on the fitness of the person to be licensed; provided, that this restriction shall not apply to the following occupations, unless the Mayor has issued rules before [May 24, 2005], specifying the criteria for the determination of fitness for licensure based on a specific offense committed by an applicant:

- (A) Asbestos worker;
- (B) Barber;
- (B-i) Body artist;
- (C) Cosmetologist;
- (D) Commercial bicycle operator;
- (E) Electrician;
- (F) Funeral director;

- (G) Operating engineer;
- (H) Plumber/gasfitter;
- (I) Refrigeration and air conditioning mechanic; and
- (J) Steam engineer.

(2) Is at least 18 years of age, or at least 17 years of age if applying for license as a barber under § 47-2853.72 or as a cosmetologist, a cosmetologist-manager, a cosmetologist-owner, or any subcategory of specialty cosmetologist under § 47-2853.82;

(3) Has successfully completed the requirements set forth in law or regulation, as applicable;

(4) If required, has passed an examination or otherwise met the requirements established by the relevant board to demonstrate his or her fitness to practice the profession or occupation; and

(5) Meets any other requirements established by the relevant board by regulation to assure that the applicant has had the proper training, experience, and qualifications to practice the profession or occupation or any subcategory or specialization of the profession or occupation.

(b) A board shall waive the requirements for passage of an examination or other proof of fitness to practice for any person who:

(1) Presents proof that he or she is licensed or certified in the same or substantially similar profession or occupation, and is currently in good standing, in any state which, on the date such license or certification was issued had standards at least as high as those required for licensure or certification in the District and admits professionals licensed by the District in a like manner; or

(2) Has passed an examination acceptable to the board (or has met other requirements for certification) and has been certified by a recognized national certifying organization acceptable to the board whose standards on the date of such certification were at least as high as the standards required for the same profession or occupation in the District, and has not been disciplined or otherwise disqualified by the national certifying organization.

(c)(1) Notwithstanding subsection (b) of this section and except as provided in paragraph (2) of this subsection, where a board determines that the occupation or profession requires a substantial knowledge of District law or procedures, the board may require that an applicant, who is otherwise qualified by virtue of licensure in another state or certification by a national certifying organization, take an examination demonstrating knowledge of the relevant District laws or procedures.

(2) An applicant applying for licensure as a journeyman electrician pursuant to § 47-2853.92(b-1) shall not be required to take an examination demonstrating knowledge of the relevant District laws or procedures.

(3) An applicant applying for licensure as a journeyman plumber or journeyman gasfitter pursuant to § 47-2853.122(b) shall be exempt from the requirements of this subsection.

(4) An applicant applying for licensure as a journeyman refrigeration and air conditioning mechanic pursuant to § 47-2853.202(c) shall be exempt from the requirements of this subsection.

(d) Each board by regulation shall maintain a list of each national certifying organization, and each state, whose standards have been determined to be at least as high as those required by the District, and which admits professionals licensed by the District in a like manner.

(d-1) The Board of Industrial Trades shall annually update the list of national certifying organizations required to be maintained pursuant to subsection (d) of this section.

(e) The Mayor may deny a license or certificate to an applicant whose license or certificate to practice an occupation or profession was revoked or suspended in another jurisdiction if the basis of the revocation or suspension would have caused a similar result in the District, or if the applicant is the subject of pending disciplinary action regarding his or her right to practice in another jurisdiction.

(f) The Mayor may deny a license or certificate to an applicant licensed or certified in another jurisdiction who has failed to meet the continuing education requirements established by that jurisdiction, but failure of an applicant to meet the continuing education requirements established by the District shall not be a basis for denial of a District license or certificate if the jurisdiction in which the applicant was licensed does not have continuing education requirements or has requirements that are different than those required by the District for the occupation or profession.

(g) The Mayor may grant a license or certificate to an applicant whose education and training in an occupation or profession has been successfully completed in a foreign school, college, university, or training program, or who is licensed or certified in the same or substantially similar profession or occupation by the foreign jurisdiction, if the applicant otherwise qualifies for licensure or certification, including passing an examination if required, and if the board determines that the education and training requirements for licensure or certification in the foreign jurisdiction were substantially equivalent, at the time they were received by the applicant, to the requirements of this subchapter.

(h) An applicant for a license, certificate, or registration shall:

(1) Submit an application to the Mayor on the form required by the Mayor; and

(2) Pay the applicable fees established by the Mayor.

(i) An applicant for licensure who otherwise qualifies for a license is entitled to be examined as follows:

(1) Each board that requires the passage of an examination for licensure shall give applicants the opportunity to take such examination at least twice a year.

(2) When a board determines that a national examination is acceptable, then the frequency, time, and place that the national examination is given shall be considered acceptable and in accordance with this subchapter.

(3) The Mayor shall notify each qualified applicant of the time and place of examination.

(4) Except as otherwise provided by this subchapter, each board shall determine the subjects, scope, form, and passing score for examinations to

assess the ability of the applicant to practice effectively the occupation or profession regulated by the board, except that when a national examination has been determined to be acceptable, the board shall use the passing score recommended by the organization administering the national examination.

(j) A person licensed or certified under this subchapter to practice an occupation or profession is authorized to practice that occupation or profession in the District while the license is effective.

(k) A person who fails to renew a license or certification required by this subchapter, or fails to re-register, shall be considered to be unqualified to practice the occupation or profession and subject to the penalties set forth in this subchapter and other applicable laws of the District if he or she continues to practice the profession or occupation.

(l) A license, certificate or registration, expires 2 years from the date of its first issuance or renewal unless renewed in accordance with procedures established in this section, except where another period is provided by law or regulation.

(m) Each board may establish by rule continuing education requirements as a condition for renewal of licenses or certificates issued under this subchapter.

(Apr. 20, 1999, D.C. Law 12-261, § 1002, 46 DCR 3142; May 24, 2005, D.C. Law 15-357, § 202(a), 52 DCR 1999; Nov. 16, 2006, D.C. Law 16-176, § 2, 53 DCR 6505; Feb. 24, 2012, D.C. Law 19-82, § 2(a), 58 DCR 11022; Oct. 23, 2012, D.C. Law 19-193, § 3(e), 59 DCR 10388; Apr. 23, 2013, D.C. Law 19-274, § 2(a), 60 DCR 2055.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-274 added (c)(3) and (c)(4).

Legislative history of Law 19-274. — Law 19-274, the “Pipefitting, Refrigeration and Air Conditioning Mechanic Occupations Equality Act of 2012,” was introduced in Council and

assigned Bill No. 19-632. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-638 and transmitted to Congress for its review. D.C. Law 19-274 became effective on April 23, 2013.

§ 47-2853.27. Fines and penalties; criminal violations.

(a) Any person who violates any provision of this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year, a fine not to exceed \$10,000, or both.

(b) Any person who has been previously convicted under this subchapter shall, upon conviction, be subject to imprisonment not to exceed one year, a fine not to exceed \$25,000, or both.

(c) The fines set forth in this section shall not be limited by [§ 22-3571.01].

(Apr. 20, 1999, D.C. Law 12-261, § 1002, 46 DCR 3142; June 11, 2013, D.C. Law 19-317, § 112(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added (c).

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART D-i.

BODY ARTISTS.

§ 47-2853.76e. Prohibitions and penalties.

(a) No person shall perform or offer to perform body art procedures, hold him or herself out as a practitioner of or entitled or authorized to practice body art procedures, assume any title of "body artist" "tattooist," "tattoo artist," "body-piercer," "body-piercing artist," or "body modification artist," and the like, use any words or letters, figures, titles, signs, cards, advertisement, or any other symbols or devices indicating or tending to indicate that the person is authorized to perform such services, or use other letters or titles in connection with that person's name which in any way represents himself or herself as being engaged in the practice of body art, or authorized to do so, unless the person is licensed by and registered with the Mayor to perform body art procedures in the District of Columbia.

(b) No body artist shall perform body art procedures on a person under 18 years of age, except ear piercing using a mechanized, pre-sterilized single-use stud and clasp ear piercing gun. Such ear piercing shall not occur unless a parent or legal guardian has provided his or her written consent.

(c) No person shall perform body art procedures if the person is unable to exercise reasonable care and safety or is otherwise impaired by reason of illness, while under the influence of alcohol, or while using any controlled substance or narcotic drug as defined in 21 U.S.C. § 802(6) or (17), respectively, or other drug in excess of therapeutic amounts or without valid medical indication, or any combination thereof.

(d) No body artist shall administer anesthetic injections or other medications and prescription drugs to customers receiving body art procedures.

(e) Any person who violates this section shall, upon conviction, be deemed guilty of a misdemeanor and may be punished by a fine not exceeding \$2,500, imprisonment for not more than 3 months, or both.

(Oct. 23, 2012, D.C. Law 19-193, § 3(g), 59 DCR 10388; Apr. 23, 2013, D.C. Law 19-271, § 2(b), 60 DCR 1727.)

Effect of amendments. — The 2013 **Legislative history of Law 19-271.** — See amendment by D.C. Law 19-271 deleted "sub-section (a) of" preceding "this section" in (e). note to § 47-2853.06.

PART I.

PLUMBERS OR GASFITTERS.

§ 47-2853.122. Eligibility requirements.

(a) An applicant to be an apprentice plumber shall be registered by the Mayor, without examination, upon providing such information as may be

required by the Board of Industrial Trades and payment of appropriate fees. An apprentice plumber shall work only under the direct personal supervision and control of a licensed master plumber/gasfitter or master gasfitter.

(b) An applicant for licensure as a journeyman plumber or journeyman gasfitter shall establish to the satisfaction of the Board of Industrial Trades that the applicant has:

(1) Worked as an apprentice plumber or gasfitter for at least 8,000 hours over at least 4 years;

(2) Graduated from an accredited college or university with a degree in mechanical engineering, and has at least 2 years of practical experience as a plumber or gasfitter as verified by a licensed master plumber or licensed master gasfitter; or

(3) Has comparable experience or a combination of education and experience that the Board deems equivalent to the above; and

(4) Such additional evidence as the Board determines is necessary for the particular specialty license sought by the applicant.

(b-1)(1) The Board shall accept, in lieu of examination and the requirements set forth in subsection (b) of this section, a certificate from a national certifying organization certifying that the applicant:

(A) Has completed the organization's apprenticeship program;

(B) Has passed the organization's required examination;

(C) Is designated by that organization as a journeyman plumber or journeyman gasfitter; and

(D) Has not been disciplined or otherwise disqualified by the organization.

(2) For the purposes of this subsection, the term "national certifying organization" shall include a nationally recognized trade organization, non-union sponsor, or labor union that is registered with the Bureau of Apprenticeship Training, the United States Department of Labor, or the District of Columbia Apprenticeship Council.

(c) An applicant for licensure as a master plumber/gasfitter or master gasfitter shall establish to the satisfaction of the Board that the applicant has a valid license as a journeyman plumber or gasfitter, or has met the requirements of subsection (b) of this section, and has worked as a journeyman plumber or journeyman gasfitter for at least 4 years.

(Apr. 20, 1999, D.C. Law 12-261, § 1002, 46 DCR 3142; Apr. 23, 2013, D.C. Law 19-274, § 2(b), 60 DCR 2055.)

Section references. — This section is referenced in § 47-2853.12.

Effect of amendments. — The 2013 amendment by D.C. Law 19-274 added (b-1).

Legislative history of Law 19-274. — See note to § 47-2853.12.

PART Q.

REFRIGERATION AND AIR CONDITIONING MECHANICS.

§ 47-2853.202. Eligibility requirements.

(a) An applicant to be an apprentice refrigeration and air conditioning mechanic shall be registered by the Mayor, without examination, upon providing such information as may be required by the Board of Industrial Trades and payment of appropriate fees. An apprentice refrigeration and air conditioning mechanic shall work only under the direct personal supervision and control of a licensed master mechanic.

(b) An applicant for licensure as a master mechanic shall establish to the satisfaction of the Board of Industrial Trades that the applicant has been employed installing, maintaining, repairing and replacing refrigeration and air conditioning equipment systems larger than 25 compressor horsepower or the equivalent tons of refrigeration in the aggregate for a period of at least 5 consecutive years immediately preceding the date of application, as verified in writing by a master mechanic.

(c) An applicant for licensure as a master mechanic limited shall establish to the satisfaction of the Board of Industrial Trades that the applicant:

(1) Has been employed installing, maintaining, repairing and replacing refrigeration and air conditioning equipment systems less than 25 compressor horsepower or the equivalent tons of refrigeration in the aggregate for a period of at least 5 consecutive years immediately preceding the date of application, as verified in writing by a master mechanic, and

(2) Have proof of chlor fluoro carbon certification.

(d)(1) The Board shall accept, in lieu of an examination, experience, or other requirements of test or skill established by the Board, a certificate from a national certifying organization certifying that the applicant:

(A) Has completed the organization's apprenticeship program;

(B) Has passed the organization's required examination;

(C) Is designated by that organization as a journeyman refrigeration and air conditioning mechanic; and

(D) Has not been disciplined or otherwise disqualified by the organization.

(2) For the purposes of this subsection, the term "national certifying organization" shall include a nationally recognized trade organization, non-union sponsor, or labor union that is registered with the Bureau of Apprenticeship Training, the United States Department of Labor, or the District of Columbia Apprenticeship Council.

(Apr. 20, 1999, D.C. Law 12-261, § 1002, 46 DCR 3142; Apr. 23, 2013, D.C. Law 19-274, § 2(c), 60 DCR 2055.)

Section references. — This section is referenced in § 47-2853.12.

Effect of amendments. — The 2013 amendment by D.C. Law 19-274 added (d).

Legislative history of Law 19-274. — See note to § 47-2853.12.

Subchapter IV. Other Licenses.

PART A.

HOME IMPROVEMENT BUSINESSES.

§ 47-2883.04. Penalty.

Any person who shall violate any provision of this part or of any regulation promulgated by the Mayor under the authority of this part shall be guilty of a misdemeanor and shall be punished by a fine not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 90 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this part, or any rules or regulations issued under the authority of this part, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this part shall be pursuant to Chapter 18 of Title 2.

(Sept. 6, 1960, 74 Stat. 816, Pub. L. 86-715, § 4; Oct. 5, 1985, D.C. Law 6-42, § 433(a), 32 DCR 4450; Sept. 26, 2012, D.C. Law 19-171, § 302, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 286(u), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not exceeding \$300”.

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART B.

PAWNBROKERS.

§ 47-2884.16. Penalties for violation of part; loan declared void; pledge returned.

(a) Any individual or any member, officer, director, agent, or employee of any firm, voluntary association, joint-stock company, incorporated society, or corporation who shall violate or participate in the violation of any of the provisions of this part shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 90 days.

(b) Any contract of loan in the making or collection of which any act shall have been done which constitutes a violation of any of the provisions of this part shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever on account thereof. Any person pledging any goods, article, or other thing as security for a loan which is void

shall be entitled to the return of such goods, article, or thing without being required to pay any principal, interest, or other charge on account of such void loan.

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this part, or any rules or regulations issued under the authority of this part, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this part shall be pursuant to Chapter 18 of Title 2.

(Aug. 6, 1956, 70 Stat. 1042, ch. 970, § 16; Oct. 5, 1985, D.C. Law 6-42, § 439, 32 DCR 4450; Sept. 26, 2012, D.C. Law 19-171, § 302, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 286(v), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “of not more than \$300” in (a).

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Legislative history of Law 19-317. — See note to § 47-2808.

PART C.

PHARMACY.

§ 47-2885.20. Penalties; prosecutions; injunction.

(a) Any person who violates any provision of this part shall be guilty of a misdemeanor and shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 6 months or both for each violation.

(b) Prosecutions for violations of any provision of this part shall be conducted in the Superior Court of the District of Columbia, by the Attorney General for the District of Columbia. It shall be sufficient to prove in any prosecution or hearing under this part only a single act prohibited by law or a single holding out, or any attempt thereof, without proving a general course of conduct in order to constitute a violation.

(c) In addition to the remedy set forth in this section, application may be made to a court having competent jurisdiction over the parties and subject matter for a writ of injunction or other civil remedy to restrain violations of the provisions of this part. Such application may be made by the Attorney General for the District of Columbia.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this part, or any rules or regulations issued under the authority of this part, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Sept. 16, 1980, D.C. Law 3-98, § 21, 27 DCR 3528; Oct. 5, 1985, D.C. Law 6-42, § 409, 32 DCR 4450; Apr. 13, 2005, D.C. Law 15-354, § 75(a), 52 DCR

2638; Sept. 26, 2012, D.C. Law 19-171, § 302, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 286(w), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500” in (a).

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes. — Applicability of D.C. Law

19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART D.

PROFESSIONAL ENGINEERS.

§ 47-2886.14. Unlawful acts.

Whoever shall engage or offer to engage in the practice of engineering without being registered, or exempted, as provided in this part, or by verbal claim, sign, letterhead, card, or in any other way represent himself to be a professional engineer or through the use of any title including the word “engineer” or words of like import, or any other title, imply that he is a professional engineer without being registered as provided in this part, or shall present or attempt to use as his own the registration certificate of another, or shall give any false or forged evidence of any kind to the Board, or to any member thereof, in order to obtain registration as a professional engineer, or shall use any suspended or revoked registration, or shall otherwise violate the laws relating to the practice of engineering shall be guilty of a misdemeanor and shall be punishable by a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for not more than 1 year, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this part, or any rules or regulations issued under the authority of this part, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this part shall be pursuant to Chapter 18 of Title 2.

(Sept. 19, 1950, 64 Stat. 865, ch. 953, § 14; Oct. 5, 1985, D.C. Law 6-42, § 442, 32 DCR 4450; Sept. 26, 2012, D.C. Law 19-171, § 302, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 286(x), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$500”.

Legislative history of Law 19-317. — See note to § 47-2808.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART E.

ATHLETE AGENTS.

§ 47-2887.14. Criminal penalties; prosecution by Attorney General.

An athlete agent who violates § 47-2887.13 is guilty of a misdemeanor and, upon conviction, is punishable by not more than the amount set forth in [§ 22-3571.01] or imprisonment of 6 months, or both. Violations shall be prosecuted by the Attorney General for the District of Columbia in the name of the District of Columbia.

(Apr. 13, 2002, D.C. Law 14-107, § 3, 49 DCR 1193); Apr. 13, 2005, D.C. Law 15-354, § 73(1)(11), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(y), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “a fine of not more than the amount set forth in [§ 22-3571.01]” for “maximum fine of \$10,000”.

Legislative history of Law 19-317. — See note to § 47-2808.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 34. MISCELLANEOUS PROVISIONS.

Sec. 47-3409. Divulging information obtained from

Internal Revenue Service prohibited; penalties.

§ 47-3409. Divulging information obtained from Internal Revenue Service prohibited; penalties.

Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Mayor or any person having an administrative duty under this chapter to divulge or make known in any manner any information obtained from the Internal Revenue Service in accordance with any provisions of the District of Columbia Revenue Act of 1937, as amended. Any violation of the provisions of this section shall subject the offender to a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for 90 days.

(Aug. 17, 1937, 50 Stat. 693, ch. 690, title VII, § 5; May 16, 1938, 52 Stat. 370, ch. 223, § 7; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; June 11, 2013, D.C. Law 19-317, § 286(z), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “of \$300”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 37. INHERITANCE AND ESTATE TAXES.

Sec.

47-3719. Secrecy of returns.

§ 47-3719. Secrecy of returns.

(a) Except as may be necessary for the enforcement of this chapter, it shall be unlawful for any officer or employee, or any former officer or employee, of the District to divulge or make known in any manner any particulars set forth or disclosed in any return required to be filed under this chapter, and neither the original nor a copy of any return desired for use in litigation in court shall be furnished where neither the District nor the United States is interested in the result of the litigation, whether or not the request is contained in an order of the court.

(b) Nothing contained in this section shall be construed to prevent the furnishing to a taxpayer of a copy of his or her return upon the payment of a fee as the Mayor may prescribe by rule.

(c) The provisions of this section shall also be applicable to any federal, state, or local inheritance or estate tax returns or copies and to any other federal, state, or local inheritance or estate tax information either submitted by the taxpayer or otherwise obtained.

(d) Notwithstanding the provisions of subsection (a) of this section, any tax returns or other tax information required by this chapter may be disclosed to any official of the District having a right to the information in his or her official capacity or to a contractor to the extent necessary for the processing, storage, transmission, or reproduction of the tax information or for the programming, maintenance, repair, testing, and procurement of equipment for purposes of tax administration. The provisions of subsections (a) and (f) of this section shall be applicable to all contractors and former contractors and to their officers and employees.

(e) The Mayor may permit the proper officer of the United States or of any state imposing a similar tax to inspect the tax returns filed with the Mayor pursuant to this chapter or may furnish the officer or representative a copy of the tax returns if the United States or the state grants substantially similar privileges to the Mayor.

(f) Any violation of the provisions of this section shall be a misdemeanor and, upon conviction, shall be punishable by a fine of not more than the amount set forth in [§ 22-3571.01], imprisonment for not more than 1 year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the

District of Columbia or his or her assistants in the name of the District of Columbia.

(Feb. 24, 1987, D.C. Law 6-168, § 20, 33 DCR 7008; enacted, Apr. 9, 1997, D.C. Law 11-254, § 2, 44 DCR 1575; Apr. 13, 2005, D.C. Law 15-354, § 73(m), 52 DCR 2638; Mar. 2, 2007, D.C. Law 16-191, § 48(h)(4), 53 DCR 6794; June 11, 2013, D.C. Law 19-317, § 286(aa), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in [§ 22-3571.01]” for “not to exceed \$1,000” in (f).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 41. CRIMINAL PROVISIONS.

Sec.

- 47-4101. Attempt to evade or defeat tax.
- 47-4102. Failure to collect or pay over tax.
- 47-4103. Failure to pay tax, make return, keep records, or supply information.
- 47-4104. Fraudulent statements or failure to make statements to employee.
- 47-4105. Fraudulent withholding information

Sec.

- or failure to supply information to employer.
- 47-4106. Fraud and false statements.
- 47-4107. Attempt to interfere with administration of District of Columbia revenue laws.

§ 47-4101. Attempt to evade or defeat tax.

(a) A person who willfully attempts in any manner to evade or defeat a tax, or the payment thereof, imposed by this title shall, in addition to other penalties provided by law, be guilty of a felony if the tax evaded or attempted to be evaded exceeds \$10,000, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01] or twice the amount of the tax evaded or attempted to be evaded, whichever is greater, or imprisoned not more than 10 years, or both, together with the costs of prosecution.

(b) A person who willfully attempts in any manner to evade or defeat a tax, or the payment thereof, imposed by this title shall, in addition to other penalties provided by law, be guilty of a misdemeanor if the tax evaded or attempted to be evaded is \$10,000 or less, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District. The amount of any taxes that were evaded or attempted to be evaded pursuant to a single scheme or systematic course of conduct in violation of this section may be aggregated to determine the grade of the offense and the sentence for the offense.

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(1), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, §§ 111(c)(1), 286(bb), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317, in (a), substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000” and substituted “twice” for “3 times”; and substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4102. Failure to collect or pay over tax.

(a) A person required under this title to collect, account for, or pay over tax imposed by this title who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a felony if the amount to be collected or accounted for and paid over exceeds \$10,000, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01] or twice the amount of the tax evaded or attempted to be evaded, whichever is greater, or imprisoned not more than 10 years, or both, together with the costs of prosecution.

(b) A person required under this title to collect or account for and pay over a tax imposed by this title who fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a misdemeanor if the amount to be collected or accounted for and paid over is \$10,000 or less, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District. The amount of any taxes that were not collected, truthfully accounted for, or paid over under a single scheme or systematic course of conduct in violation of this section may be aggregated in determining the grade of the offense and the sentence for the offense.

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(2), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, §§ 111(c)(2), 286(cc), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 in (a), substituted “twice” for “3 times” and substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$10,000”; and substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (b).

Legislative history of Law 19-317. — See note to § 47-4101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4103. Failure to pay tax, make return, keep records, or supply information.

(a) A person required under this title to pay a tax or estimated tax, or required by this title, or by regulations made under authority thereof, to make a return, keep any records, or supply any information, who willfully fails to pay the tax, pay the estimated tax, make the return, keep the records, or supply the information, at the time required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution.

(b) A person required under this title to pay a tax or estimated tax, make a return, keep any records, or supply any information, who fails to pay the tax, pay the estimated tax, make the return, keep the records, or supply the information, at the time required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution.

(c) All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District.

(d) The fines set forth in this section shall not be limited by [§ 22-3571.01].

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(3), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, §§ 113(d)(1), 286(dd), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (a), and for “not more than \$3,000” in (b); and added (d).

Legislative history of Law 19-317. — See note to § 47-4101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4104. Fraudulent statements or failure to make statements to employee.

A person required under this title, or under regulations made under authority thereof, to furnish a statement or supply information to an employee, who willfully furnishes a false or fraudulent statement or false or fraudulent information, or who willfully fails to furnish a statement or supply information to an employee in the manner and at the time prescribed under this title, or under regulations made under authority thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Superior Court of

the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District.

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(4), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(ee), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$3,000”.

Legislative history of Law 19-317. — See note to § 47-4101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4105. Fraudulent withholding information or failure to supply information to employer.

A person required under this title, or under regulations made under authority thereof, to furnish withholding information or supply information to an employer, who willfully furnishes false or fraudulent withholding information or other information, or willfully fails to furnish withholding information or other information to an employer in the manner and at the time prescribed under this title, or under regulations made under authority thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District.

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(5), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(ff), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$3,000”.

Legislative history of Law 19-317. — See note to § 47-4101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4106. Fraud and false statements.

(a) A person who willfully makes and subscribes, delivers, or discloses a return, statement, list, account, or other document required under this title, or under regulations made under authority thereof, which he or she does not believe to be true and correct as to every material matter, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 180 days, or both, together with costs of prosecution.

(b) A person who willfully aids or assists in, procures, counsels, or advises the preparation or presentation under, or in connection with, a matter arising under this title, or under regulations made under authority thereof, of a return, affidavit, claim, list, account, or other document, which is fraudulent or is false as to any material matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, list, account, or document, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 180 days, or both, together with costs of prosecution.

(c) A person who willfully makes and subscribes, delivers, or discloses a return, statement, list, account, or other document required under this title, or under regulations made under authority thereof, which he or she does not believe to be true and correct as to every matter, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$3,000, or imprisoned not more than 180 days, or both, together with costs of prosecution.

(d) A person who willfully aids or assists in, procures, counsels, or advises the preparation or presentation under, or in connection with, any matter arising under this title, or under regulations made under authority thereof, of a return, affidavit, claim, list, account, or other document, which is fraudulent or is false as to any matter, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to present the return, affidavit, claim, list, account, or document, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$3,000, or imprisoned not more than 180 days, or both, together with costs of prosecution.

(e) All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District.

(f) The fines set forth in this section shall not be limited by [§ 22-3571.01].

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; June 12, 2003, D.C. Law 14-310, § 11(c), 50 DCR 1092; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(6), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 113(d)(2), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (f).

Legislative history of Law 19-317. — See note to § 47-4101.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4107. Attempt to interfere with administration of District of Columbia revenue laws.

(a) A person who attempts to influence, intimidate, or impede an officer or employee of the District of Columbia acting in an official capacity under this title, or under regulations made under authority thereof, or in any other way

corruptly or by force or threats of force (including a threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this title, regardless of the existence of an investigation brought under this title, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution.

(b) A person who forcibly rescues or causes to be rescued any property, or attempts to do so, after it has been seized under this title, or under regulations made under authority thereof, shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both, together with costs of prosecution.

(c) All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District.

(Oct. 4, 2000, D.C. Law 13-204, § 2(b), 47 DCR 5799; Apr. 13, 2005, D.C. Law 15-354, § 73(n)(7), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(gg), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$5,000” in (a) and (b).

Legislative history of Law 19-317. — See note to § 47-4101.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 44. COLLECTIONS.

Subchapter I. General Provisions

Sec.

47-4406. Secrecy of returns.

Sec.

47-4405. Collections through third party contractors.

Subchapter I. General Provisions.

§ 47-4405. Collections through third party contractors.

(a) For purposes of this section, the term “delinquent taxes” includes all tax liabilities that are due and owing for a period longer than 90 days which may be collected under this chapter and for which the taxpayer has been sent notice in accordance with subsection (b)(1) of this section.

(b)(1) For the purpose of collecting delinquent taxes due from a taxpayer, the Mayor may contract with a collection agency inside or outside the District of Columbia. Before contracting with a collection agency, the Mayor shall send the taxpayer at least one written notice, by certified or registered mail, to the taxpayer’s last known mailing address requesting payment. The notice shall

state that the matter of the taxpayer's delinquency may be referred to a collection agency. The taxpayer shall have 30 days from the date of mailing of the certified or registered notice to pay, in full, the delinquent taxes before the delinquent account is referred to a collection agency.

(2) All funds collected by the collection agency shall be remitted to the Mayor not less than once a month. Forms to be utilized for the remittances may be prescribed by the Mayor. The Mayor may require that the collection agency furnish a bond securing compliance with the provisions of this subsection and the contract with the District of Columbia.

(3) The costs of collection, including reasonable attorneys' or agents' fees, shall be the responsibility of the delinquent taxpayer. In addition to the costs of collection, the collection agency may charge a collection fee not in excess of 25% of the total amount of the delinquent taxes, including penalties and interest, that is actually collected.

(c) Notwithstanding any other provision contained in this title or Title 42, the tax return or other information required to be disclosed in connection with the tax return may be provided to a collection agency for purposes of collecting a delinquent tax under this section. If the tax return or other information is provided to a collection agency under this subsection, the collection agency shall not disclose the information to a third party, other than the taxpayer (or his or her representative), unless the Mayor would be authorized by law to make the disclosure. A collection agency, or employee of a collection agency, violating the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned for not more than 180 days, or both. All prosecutions under this paragraph shall be brought in the Superior Court of the District of Columbia on information by the Attorney General for the District of Columbia in the name of the District of Columbia.

(d) If the Mayor does not contract with a collection agency inside or outside the District of Columbia, for the collection of delinquent taxes due from a taxpayer, a collection fee not in excess of 25% may be charged by the District as set forth in subsection (b)(3) of this section.

(June 9, 2001, D.C. Law 13-305, § 405(b), 48 DCR 334; Oct. 19, 2002, D.C. Law 14-213, § 33(bb), 49 DCR 8140; Apr. 4, 2003, D.C. Law 14-282, § 11(eee), 50 DCR 896; Apr. 13, 2005, D.C. Law 15-354, § 73(o)(1), 52 DCR 2638; Oct. 20, 2005, D.C. Law 16-33, § 1062, 52 DCR 7503; June 11, 2013, D.C. Law 19-317, § 286(hh), 60 DCR 2064.)

Section references. — This section is referenced in § 47-4407.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in [§ 22-3571.01]" for "not more than \$1,000" in (c).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 47-4406. Secrecy of returns.

(a) Except as provided in subsections (b), (c), (d)(2), (e), (e-1), and (e-2) of this section, and except as to an official of the District of Columbia, having a right thereto in his official capacity, an officer, employee, or contractor, or a former officer, employee, or contractor, of the District of Columbia shall not divulge or make known in any manner the amount of reported value, or any information relating to value or the computation of value, disclosed in a return required to be filed under this title. The original (or a copy) of a tax return desired for use in litigation in court shall not be furnished where the District of Columbia or the United States is not interested in the result of the litigation, whether or not the request is contained in an order of the court. Nothing contained in this section shall prevent the furnishing to the taxpayer of a copy of his or her return upon the payment of a fee as provided by the Mayor. This subsection shall also be applicable to federal, state, or local tax returns (or copies of these returns) and to federal, state, or local tax information either submitted by the taxpayer or otherwise obtained.

(b) The District of Columbia may provide the information reported in a tax return to either the Mayor, the Office of Administrative Hearings, or the United States if either the District of Columbia or the United States is a party to litigation in which either of the 2 governments is interested in the result of the litigation and if the information reported in the tax return would be relevant to the liabilities of the parties in the litigation.

(c) The District of Columbia may provide the information reported in a tax return to either the federal government or a state government if the United States, with respect to disclosure to the federal government, and the state government, with respect to disclosure to the state government, grant substantially similar privileges to the District of Columbia.

(d) The District of Columbia may publish the following information if it does not identify particular tax returns and items in tax returns:

- (1) Statistics about the tax system;
- (2) A list of taxpayers who are delinquent in their taxes; and
- (3) Other information that may help the Mayor collect taxes.

(e) The District of Columbia may disclose information reported on tax returns to a contractor obligated to the District of Columbia to store documents or information to provide other services related to tax administration to the extent that the disclosure relates to the obligations of the contractor.

(e-1) The provisions of this section shall not apply to the return required by §§ 42-1103 and 47-903, unless otherwise provided by regulation.

(e-2) Notwithstanding [sic] any other provision of this section, the Office of Tax and Revenue may furnish in accordance with § 11-1905 to the Superior Court of the District of Columbia, upon request of the Court, the names, addresses, and social security numbers of individuals who have filed a return under § 47-1805.02(1).

(f) A person who willfully violates this section shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than the amount set forth in [§ 22-3571.01], or imprisoned not more than 180 days, or both.

Prosecutions under this section shall be brought in the Superior Court of the District of Columbia by the Attorney General for the District of Columbia in the name of the District of Columbia.

(June 9, 2001, D.C. Law 13-305, § 405(b), 48 DCR 334; Apr. 4, 2003, D.C. Law 14-282, § 11(fff), 50 DCR 896; Dec. 9, 2003, D.C. Law 15-50, § 2(b), 50 DCR 8980; Dec. 7, 2004, D.C. Law 15-217, § 4(m), 51 DCR 9126; Apr. 13, 2005, D.C. Law 15-354, § 73(o)(2), 52 DCR 2638; June 11, 2013, D.C. Law 19-317, § 286(ii), 60 DCR 2064.)

Section references. — This section is referenced in § 47-903.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in [§ 22-3571.01]” for “not more than \$1,000” in (f).

Legislative history of Law 19-317. — See note to § 47-4405.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 46. SPECIAL TAX INCENTIVES.

Sec.

47-4656. Abatement of real property taxes for Howard Town Center. [Not funded].

47-4657. The Elizabeth Ministry, Inc. Affordable Housing Initiative; Lots 140 and 141, Square 5252. [Not funded].

Sec.

47-4658. Parkside Parcel E and J Mixed-Income Apartments; Lot 808, Square 5041 and Lot 811, Square 5056. [Not funded].

47-4659. The Israel Senior Residences, Lot 60, Square 3848. [Not funded].

§ 47-4654. Beulah Baptist Church, Dix Street Corridor Senior Housing LP, et al. equitable tax relief.

Temporary Amendment of Section. — Section 2 of D.C. Law 19-297 substituted “September 30, 2020, and any real property taxes, interest, penalties, fees, or other related charges assessed, as of the effective date of the Beulah Baptist Church Real Property Equitable Tax Relief Temporary Act of 2013, passed on 2nd reading on January 8, 2013 (Enrolled ver-

sion of Bill 19-1099), against this real property with respect to this period are forgiven and any payment already made shall be refunded” for “September 30, 2010” in (d).

Section 4(b) of D.C. Law 19-297 provided that the act shall expire after 225 days of its having taken effect.

§ 47-4656. Abatement of real property taxes for Howard Town Center. [Not funded].

[Not funded].

(Apr. 20, 2013, D.C. Law 19-257, § 2(b), 60 DCR 992.)

Legislative history of Law 19-257. — Law 19-257, the “Howard Town Center Real Property Tax Abatement Act of 2012,” was introduced in Council and assigned Bill No. 19-443. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respec-

tively. Signed by the Mayor on Jan. 14, 2013, it was assigned Act No. 19-593 and transmitted to Congress for its review. D.C. Law 19-257 became effective on Apr. 20, 2013.

Editor’s notes. — Section 3 of D.C. Law 19-257 provided that the act shall apply upon

the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director

of the Council in a certification published by the Council in the District of Columbia Register.

§ 47-4657. The Elizabeth Ministry, Inc. Affordable Housing Initiative; Lots 140 and 141, Square 5252. [Not funded].

[Not funded].

(Apr. 20, 2013, D.C. Law 19-253, § 2(b), 60 DCR 982.)

Legislative history of Law 19-253. — Law 19-253, the “Elizabeth Ministry, Inc. Affordable Housing Initiative Real Property Tax Relief Act of 2012,” was introduced in Council and assigned Bill No. 19-443. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 14, 2013, it was assigned Act No.

19-589 and transmitted to Congress for its review. D.C. Law 19-253 became effective on Apr. 20, 2013.

Editor’s notes. — Section 4 of D.C. Law 19-253 provided that the act shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

§ 47-4658. Parkside Parcel E and J Mixed-Income Apartments; Lot 808, Square 5041 and Lot 811, Square 5056. [Not funded].

[Not funded].

(Apr. 20, 2013, D.C. Law 19-255, § 2(b), 60 DCR 987.)

Legislative history of Law 19-255. — Law 19-255, the “Parkside Parcel E and J Mixed-Income Apartments Tax Abatement Act of 2012,” was introduced in Council and assigned Bill No. 19-741. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 12, 2013, it was assigned Act No. 19-591 and transmitted to Congress for its review. D.C. Law 19-255 became effective on Apr. 20, 2013.

Editor’s notes. — Section 3 of D.C. Law 19-255 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 47-4659. The Israel Senior Residences, Lot 60, Square 3848. [Not funded].

[Not funded].

(Apr. 27, 2013, D.C. Law 19-285, § 2, 60 DCR 2316.)

Legislative history of Law 19-285. — Law 19-285, the “Israel Senior Residences Tax Exemption Act of 2012,” was introduced in Council and assigned Bill No. 19-800. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-652 and transmitted to Congress for its

review. D.C. Law 19-285 became effective on April 27, 2013.

Editor’s notes. — Applicability of D.C. Law 19-285: Section 3 of D.C. Law 19-285 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a

certification published by the Council in the
District of Columbia Register.

TITLE 48. FOODS AND DRUGS.

SUBTITLE I. FOOD.

Chapter

1. Adulteration.

SUBTITLE II. PRESCRIPTION DRUGS.

7. Drug Manufacture and Distribution Licensure.

SUBTITLE III. ILLEGAL DRUGS.

9. Controlled Substances.

10. Drug Free Zones.

11. Drug Paraphernalia.

SUBTITLE I. FOOD.

CHAPTER 1. ADULTERATION.

Sec.

48-109. Prosecutions; violations.

§ 48-109. Prosecutions; violations.

(a) Whenever the Mayor has reason to believe that there has been a violation of this chapter or the rules promulgated pursuant to this chapter, the Mayor shall give written notice of the alleged violation to the licensee, person in charge, or employee. The notice shall state the nature of the violation and shall allow a reasonable time for the performance of the necessary corrective measures. Failure to comply shall result in penalties as set forth in subsection (b) of this section.

(b) A person who violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be liable for a civil penalty in an amount not to exceed \$10,000 for each violation. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense.

(c) Any person who knowingly violates any of the provisions of this chapter, or the rules promulgated pursuant to this chapter, shall be punished by a fine not more than the amount set forth in § 22-3571, or imprisonment not to exceed one year, or both. Each day of a violation shall constitute a separate offense and the penalties prescribed shall apply separately to each offense. Prosecutions for violations of this subsection shall be brought in the Superior

Court of the District of Columbia by the Corporation Counsel for the District of Columbia.

(d) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules issued under the authority of this chapter, pursuant to Chapter 18 of Title 2.

(e) Any person who contests a final order of the Mayor issued pursuant to this chapter, after exhaustion of all administrative remedies, is entitled to judicial review of the final order upon filing a written petition for review in the District of Columbia Court of Appeals.

(Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Oct. 5, 1985, D.C. Law 6-42, § 476, 32 DCR 4450; May 2, 2002, D.C. Law 14-116, § 2(h), 49 DCR 1945; June 11, 2013, D.C. Law 19-317, § 251, 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not to exceed \$10,000” in (c).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE II. PRESCRIPTION DRUGS.

CHAPTER 7. DRUG MANUFACTURE AND DISTRIBUTION LICENSURE.

Sec.

48-711. Criminal action.

§ 48-711. Criminal action.

A person who willfully violates § 48-702(1) is guilty of a misdemeanor, and, upon conviction, shall be fined not more than \$5,000 for the first offense or \$10,000 for the second or subsequent offense, imprisoned for not more than one year, or both. Each day that a violation continues is a separate violation under this chapter. The fines set forth in this section shall not be limited by § 22-3571.01. The fines set forth in this section shall not be limited by § 22-3571.01.

(June 13, 1990, D.C. Law 8-137, § 12, 37 DCR 2631; June 11, 2013, D.C. Law 19-317, § 113(g), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE III. ILLEGAL DRUGS.

CHAPTER 9. CONTROLLED SUBSTANCES.

UNIT A. CONTROLLED SUBSTANCES ACT

Subchapter II. Standards and Schedules

Sec.

- 48-902.01. Administration.
- 48-902.04. Schedule I enumerated.
- 48-902.06. Schedule II enumerated.
- 48-902.08. Schedule III enumerated.
- 48-902.10. Schedule IV enumerated.

Subchapter IV. Offenses and Penalties

- 48-904.01. Prohibited acts A; penalties.
- 48-904.02. Prohibited acts B; penalties.
- 48-904.03. Prohibited acts C; penalties.

Sec.

- 48-904.03a. Prohibited acts D; penalties.
- 48-904.07. Enlistment of minors to distribute.
- 48-904.08. Second or subsequent offenses.
- 48-904.10. Possession of drug paraphernalia.

UNIT B. GENERAL

Subchapter VIII. Searches Involving Controlled Substances

- 48-921.02. Search warrants; issuance, execution and return; property inventory; filing of proceedings; interference with service.

Unit A. Controlled Substances Act.

Subchapter II. Standards and Schedules.

§ 48-902.01. Administration.

(a) The Mayor shall administer this chapter and, with provision for public notice and comment, may add substances to or delete or reschedule all substances enumerated in the schedules in § 48-902.04, § 48-902.06, § 48-902.08, § 48-902.10 or § 48-902.12 pursuant to subchapter I of Chapter 5 of Title 2 and pursuant to the procedures set forth in this chapter. In making a determination regarding a substance, the Mayor shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychological or physiological dependence; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

(b) After considering the factors enumerated in subsection (a) of this section and after complying with subchapter I of Chapter 5 of Title 2, the Mayor shall make findings with respect to the factors and issue a rule either controlling the substance if the Mayor finds that the substance has a potential for abuse or deleting the substance if the Mayor finds that the substance does not have a potential for abuse.

(c) If the Mayor designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law, the Mayor may similarly designate, reschedule, or delete the controlled substance under this unit, or may otherwise designate, reschedule or delete as a controlled substance pursuant to subsections (a) and (b) of this section.

(e) Authority to control under this section does not extend to tobacco or to distilled spirits, wine, or malt beverages, as those terms are defined or used in § 25-103.

(Aug. 5, 1981, D.C. Law 4-29, § 201, 28 DCR 3081; Aug. 1, 1985, D.C. Law 6-15, § 5, 32 DCR 3570; July 24, 1998, D.C. Law 12-136, § 2(a), 45 DCR 2942; June 19, 2013, D.C. Law 19-320, § 301(a), 60 DCR 3390.)

Section references. — This section is referenced in § 22-2603.01, § 48-901.02, § 48-902.04, § 48-902.06, § 48-902.08, § 48-902.10, and § 48-902.12.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320, in (d), substituted “the Mayor may similarly designate, reschedule, or delete the controlled substance” for “the Mayor may similarly propose to control or delete the substance” and added “or may otherwise designate, reschedule or delete as a controlled substance”.

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 48-902.04. Schedule I enumerated.

The controlled substances listed in this section are included in Schedule I, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(A) Acetylmethadol;

(B) Allylprodine;

(C) Alphacetylmethadol (except levo-alphacetylmethadol, also known as levo-alphaacetylmethadol, levomethadyl, acetate, or LAAM);

(D) Alphameprodine;

(E) Alphamethadol;

(F) Benzethidine;

(G) Betacetylmethadol;

(H) Betameprodine;
(I) Betamethadol;
(J) Betaprodine;
(K) Clonitazene;
(L) Dextromoramide;
(M) Diampromide;
(N) Diethylthiambutene;
(O) Difenoxin;
(P) Dimenoxadol;
(Q) Dimepheptanol;
(R) Dimethylthiambutene;
(S) Dioxaphetylbutyrate;
(T) Dipipanone;
(U) Ethylmethylthiambutene;
(V) Etonitazene;
(W) Etoxeridine;
(X) Furethidine;
(Y) Hydroxypethidine;
(Z) Ketobemidone;
(AA) Levomoramide;
(BB) Levophenacylmorphane;
(CC) Morpheridine;
(DD) Noracymethadol;
(EE) Norlevorphanol;
(FF) Normethadone;
(GG) Norpipanone;
(HH) Phenadoxone;
(II) Phenampromide;
(JJ) Phenomorphan;
(KK) Phenoperidine;
(LL) Piritramide;
(MM) Proheptazine;
(NN) Properidine;
(OO) Propiram;
(PP) Racemoramide;
(QQ) Thiophene;
(RR) Trimeperidine;
(SS) Acetyl-Alpha-Methylfentanyl;
(TT) Alphe-methylfentanyl;
(UU) Alpha-Methylthiofentanyl;
(VV) Beta-hydroxyfentanyl;
(WW) Beta-hydroxy-3-Methylfentanyl;
(XX) 3-Methylfentanyl;
(YY) 3-Methylthiofentanyl;
(ZZ) MPPP;
(AAA) Para-fluorofentanyl;
(BBB) PEPAP;

(CCC) Thiofentanyl; and

(DDD) Tilidine;

(2) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Acetorphine;
- (B) Acetyldihydrocodeine;
- (C) Benzylmorphine;
- (D) Codeine methylbromide;
- (E) Codeine-N-Oxide;
- (F) Cyprenorphine;
- (G) Desomorphine;
- (H) Dihydromorphine;
- (I) Drotepanol;
- (J) Etorphine (except hydrochloride salt);
- (K) Diacetylated morphine (heroin);
- (L) Hydromorphenol;
- (M) Methyldesorphine;
- (N) Methyldihydromorphine;
- (O) Morphine methylbromide;
- (P) Morphine methylsulfonate;
- (Q) Morphine-N-Oxide;
- (R) Myrophine;
- (S) Nicocodeine;
- (T) Nicomorphine;
- (U) Normorphine;
- (V) Pholcodine; and
- (W) Thebacon;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, its salts, isomers and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position, and geometric isomers):

- (A) 4-bromo-2, 5-dimethoxyamphetamine;
- (B) 2, 5 dimethoxyamphetamine;
- (C) 4-methoxyamphetamine;
- (D) 5-methoxy-3, 4-methylenedioxy amphetamine;
- (E) 4-methyl-2,5-dimethoxyamphetamine;
- (F) 3,4-methylenedioxyamphetamine [MDA];
- (G) 3, 4, 5-trimethoxy amphetamine;
- (H) Bufotenine;
- (I) Diethyltryptamine;
- (J) Dimethyltryptamine;
- (K) Ethylamide analog of phencyclidine, PCE;
- (L) Ibogaine;

- (M) Lysergic acid diethylamide;
- (N) Mescaline;
- (O) Peyote;
- (P) N-ethyl-3-piperidyl benzilate;
- (Q) N-methyl-3-piperidyl benzilate;
- (R) Psilocybin;
- (S) Psilocyn;
- (T) Pyrrolidine analog of phencyclidine, PCPY;
- (U) Thiophene analog of phencyclidine;
- (V) Repealed;
- (W) Parahexyl;
- (X) 4-bromo-2,5-dimethoxyphenethylamine;
- (Y) 3,4-methylenedioxymethamphetamine [MDMA];
- (Z) Alpha-methyltryptamine (other name: AMT);
- (AA) 5-methoxy-N,N-diisopropyltryptamine (other name: 5- MeO-DIPT);
- (BB) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7);
- (CC) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- (DD) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D);
- (EE) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);
- (FF) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);
- (GG) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2);
- (HH) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4);
- (II) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);
- (JJ) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N); and
- (KK) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P);

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, or mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Mecloqualone;
- (B) Methaqualone; and
- (C) Gamma-hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their analogues or derivatives and its salts, isomers, and salts of isomers:

- (A) Fenethyline;
- (B) N-ethylamphetamine;
- (C) Cathinone;
- (D) N-Benzylpiperazine (some other names: BZP, 1- benzylpiperazine);

(E) Methcathinone (Some other names: 2-(methylamino)- propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1- one; alpha- -methylaminopropiophenone; monomethylpropion; ephedrone; — methylcathinone; methylcathinone; AL-464; AL-422; AL-463 and UR1432), its salts, optical isomers and salts of optical isomers, as well as synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to methcathinone;

(F) 4-methyl-N-methylcathinone (other name: mephedrone);

(G) 3,4-methylenedioxypropyvalerone (other name: MDPV); and

(H) 3,4-methylenedioxy-N-methylcathinone (other name: methytlone).

(Aug. 5, 1981, D.C. Law 4-29, § 204, 28 DCR 3081; amended by rule, 39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967; May 9, 2000, D.C. Law 13-99, § 2(a), 47 DCR 791; Dec. 10, 2009, D.C. Law 18-88, § 225, 56 DCR 7413; June 19, 2013, D.C. Law 19-320, § 301(b), 60 DCR 3390.)

Section references. — This section is referenced in § 7-3002, § 44-1201, § 48-901.02, § 48-902.01, § 48-902.02, § 48-1004, and § 50-2206.13.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320

added (3)(Z) through (3)(KK); added (4)(C); inserted “their analogues or derivatives and” in the introductory language of (5); added (5)(D) through (5)(H); and made related changes.

Legislative history of Law 19-320. — See note to § 48-902.01.

§ 48-902.06. Schedule II enumerated.

The controlled substances listed in this section are included in Schedule II unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(A) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid extracts;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine Hydrochloride;
- (x) Hydrocodone;
- (xi) Metopon;
- (xii) Morphine;
- (xiii) Oxycodone;
- (xiv) Oxymorphone;
- (xv) Thebaine;
- (xvi) Hydromorphone;

- (xvii) Dihydrocodeine;
- (xviii) Sufentanil;
- (xix) Alfentanil; and
- (xx) Carfentanil;

(B) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (A) of this paragraph, but not including the isoquinoline alkaloids of opium;

(C) Opium poppy and poppy straw;

(D) Coca leaves, except coca leaves or extracts of coca leaves from which cocaine, ecgonine, or derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; or any compound, mixture, or preparation that contains any substance referred to in this paragraph;

(E) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy);

(F) Hashish; and

(G) Synthetic Tetrahydrocannabinols: Chemical equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

(ii) Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; or

(iii) Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers (compounds of these structures, regardless of numerical designation of atomic positions covered);

(2) Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan excepted:

(A) Alphaprodine;

(B) Anileridine;

(C) Bezitramide;

(D) Biphentamine;

(E) Diphenoxylate;

(F) Eskatrol;

(G) Fentanyl;

(H) Fetamine;

(I) Isomethadone;

(J) Levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM;

(K) Levomethorphan;

(L) Levorphanol;

(M) Metazocine;

- (N) Methadone;
- (O) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (P) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (Q) Pethidine (meperidine);
- (R) Pethidine—Intermediate — A, 4-cyano-1-methyl-4- phenyl-piperidine;
- (S) Pethidine—Intermediate — B, ethyl-4-phenylpiperidine- 4-carbox-ylate;
- (T) Pethidine—Intermediate — C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid;
- (U) Phenazocine;
- (V) Piminodine;
- (W) Racemethorphan; and
- (X) Racemorphan;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (A) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (B) Methamphetamine, its salts, isomers, and salts of its isomers;
- (C) Phenmetrazine and its salts;
- (D) Methylphenidate and its salts;
- (E) Repealed.
- (F) Amphetamine/methamphetamine immediate precursor: Phenyl acetone (Phenyl-2-propanone), P2P; and

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Methagualone;
- (B) Amobarbital;
- (C) Secobarbital;
- (D) Pentobarbital;
- (E) Phencyclidine;
- (F) Phencyclidine immediate precursors:
 - (i) 1-phenyleyclohexylamine
 - (ii) 1-piperidinocyclohexanecarbonitrile (PCC);
- (G) Dronabinol;
- (H) Nabilone; and
- (I) Glutethimide.

(Aug. 5, 1981, D.C. Law 4-29, § 206, 28 DCR 3081; amended by rule, 32 DCR 1097; June 13, 1990, D.C. Law 8-138, § 2(b), 37 DCR 2638; amended by rule,

39 DCR 1882; amended by rule, Dec. 7, 1994, 41 DCR 7967; June 19, 2013, D.C. Law 19-320, § 301(c), 60 DCR 3390.)

Section references. — This section is referenced in § 7-3002, § 44-1201, § 48-901.02, § 48-902.01, § 48-902.02, and § 48-1004.

amendment by D.C. Law 19-320 substituted “Dronabinol” for “Dronabianol” in (4)(G).

Effect of amendments. — The 2013

Legislative history of Law 19-320. — See note to § 48-902.01.

§ 48-902.08. Schedule III enumerated.

(a) The controlled substances listed in this section are included in Schedule III, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under § 1308.32 of the Code of Federal Regulations, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

- (B) Benzphetamine;
- (C) Chlorphentermine;
- (D) Clortermine;
- (E) Mazindol; and
- (F) Phendimetrazine;

(2) Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(A) Any compound, mixture, or preparation containing:

- (i) Amobarbital;
- (ii) Secobarbital; or
- (iii) Pentobarbital; or any salt thereof and 1 or more other active

medicinal ingredients which are not listed in any schedule;

(B) Any suppository dosage form containing:

- (i) Amobarbital;
- (ii) Secobarbital;

(iii) Pentobarbital; or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(C) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid:

- (i) Chlorhexadol;
- (ii) Rescheduled to Schedule II;
- (iii) Lysergic acid;
- (iv) Lysergic acid amide;

- (v) Methypylon;
- (vi) Sulfondiethylmethane;
- (vii) Sulfonethylmethane;
- (viii) Sulfonmethane;
- (ix) Tiletamine & Zolazepam Combination Product; and
- (x) Vinbarbital;

(3) Nalorphine;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(A) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(B) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(C) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a 4-fold or greater quantity of an isoquinoline alkaloid of opium;

(D) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(E) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(F) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

(G) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

(H) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, drug, or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progesterons, and corticosteroids) that promotes muscle growth and includes:

- (A) Boldenone;
- (B) Chlortestosterone (4-chlortestosterone);
- (C) Clostebol;
- (D) Dehydrochlormethyltestosterone;
- (E) Dihydrotestosterone (4-dihydrotestosterone);
- (F) Drostanolone;
- (G) Ethylestrenol;
- (H) Fluoxymestorone;

- (I) Formebolone (formebolone);
- (J) Mesterolone;
- (K) Methandienone;
- (L) Methandranone;
- (M) Methandriol;
- (N) Methandrostenolone;
- (O) Methenolone;
- (P) Methyltestosterone;
- (Q) Mibolerone;
- (R) Nandrolone;
- (S) Norethandrolone;
- (T) Oxandrolone;
- (U) Oxymesterone;
- (V) Oxymetholone;
- (W) Stanolone;
- (X) Stanozolol;
- (Y) Testolactone;
- (Z) Testosterone;
- (AA) Trenbolone; and

(BB) Any salt, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by Secretary of Health and Human Services for such administration. If any person prescribes, dispenses or distributes such steroid for human use such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this paragraph;

(6) Cannabis; and

(7)(A) Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of cannabimimetic agents, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(B)(i) For the purposes of this paragraph, the term “cannabimimetic agents” means any substance that is a cannabinoid receptor type 1 (CB1 receptor) agonist as demonstrated by binding studies and functional assays within any of the following structural classes:

(I) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent.

(II) 3-(1-naphthoyl)indole or 3-(1-naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent.

(III) 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent.

(IV) 1-(1-naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent.

(V) 3-phenylacetylindole or 3-benzoylindole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent.

(ii) The term "cannabimimetic agents" includes:

(I) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3- (2-methyloctan-2-yl)-6a,7,10, 10a-tetrahydrobenzo[c] chromen-1-ol)(HU-210);

(II) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol (CP 47,497);

(III) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3- hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog);

(IV) 1-pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678);

(V) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

(VI) 1-hexyl-3-(1-naphthoyl)indole (JWH- 019);

(VII) 1-[2-(4-morpholinyl)ethyl]-3-(1- naphthoyl)indole (JWH-200);

(VIII) 1-pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250);

(IX) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081);

(X) 1-pentyl-3-(4-methyl-1-naphthoyl)indole (JWH- 122);

(XI) 1-pentyl-3-(4-chloro-1-naphthoyl)indole (JWH- 398);

(XII) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole (AM2201);

(XIII) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole (AM694);

(XIV) 1-pentyl-3-[(4-methoxy)-benzoyl]indole (SR- 19 and RCS-4);

(XV) 1-cyclohexylethyl-3-(2- methoxyphenylacetyl)indole (SR-18 and RCS-8); and

(XVI) 1-pentyl-3-(2-chlorophenylacetyl)indole (JWH-203).

(b) The Mayor may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (1) and (2) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(Aug. 5, 1981, D.C. Law 4-29, § 208, 28 DCR 3081; amended by rule, 39 DCR 1882; amended by rule Dec. 7, 1994, 41 DCR 7967; June 8, 2001, D.C. Law 13-300, § 2(a), 47 DCR 7037; June 19, 2013, D.C. Law 19-320, § 301(d), 60 DCR 3390.)

Section references. — This section is referenced in § 7-3002, § 44-1201, § 48-902.01, § 48-902.02, and § 48-1004.

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 added (a)(7); and made related changes.

Legislative history of Law 19-320. — See note to § 48-902.01.

§ 48-902.10. Schedule IV enumerated.

(a) The controlled substances listed in this section are included in Schedule IV, unless and until removed therefrom pursuant to § 48-902.01:

(1) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (A) Barbitol;
- (B) Chloral betaine;
- (C) Chloral hydrate;
- (D) Chlordiazepoxide;
- (E) Clonazepam;
- (F) Clorazepate;
- (G) Dextropropoxyphene;
- (H) Diazepam;
- (I) Ethchlorvynol;
- (J) Ethinamate;
- (K) Flurazepam;
- (L) Lorazepam;
- (M) Mebutamate;
- (N) Meprobamate;
- (O) Methohexital;
- (P) Methylphenobarbital (mephobarbital);
- (Q) Oxazepam;
- (R) Paraldehyde;
- (S) Petrichloral;
- (T) Phenobarbital;
- (U) Prazepam;
- (V) Alprazolam;
- (W) Bromazepam;
- (X) Camazepam;
- (Y) Clobazam;
- (Z) Clotiazepam;
- (AA) Cloxazolam;
- (BB) Delorazepam;
- (CC) Estazolam;
- (DD) Ethyl loflazepate;
- (EE) Fludiazepam;
- (FF) Flunitrazepam;
- (GG) Halazepam;
- (HH) Haloxazolam;
- (II) Ketazolam;
- (JJ) Loprazolam;
- (KK) Lormetazepam;
- (LL) Medazepam;

(MM) Midazolam;
(NN) Nimetazepam;
(OO) Nitrazepam;
(PP) Oxazolam;
(QQ) Omitted;
(RR) Pinazepam;
(SS) Quazepam;
(TT) Temazepam;
(UU) Tetrazepam;
(VV) Triazolam; and
(WW) Fospropofol;

(2) Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible, such as Fenfluramine;

(3) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(A) Diethylpropion;
(B) Phentermine;
(C) Pemoline (including organometallic complexes and chelates thereof);
(D) Cathine;
(E) Fencamfamin;
(F) Fenproporex;
(G) Mefenorex;
(H) Pipradrol; and
(I) SPA;

(4) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(A) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1), 2-diphenyl-1-3-methyl-2-propionoxybutane; and
(B) Pentazocine; and

(5) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof of not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(b) The Mayor may except by rule any compound, mixture, or preparation containing any depressant substance listed in paragraph (1) of subsection (a) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains 1 or more active medicinal

ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

(Aug. 5, 1981, D.C. Law 4-29, § 210, 28 DCR 3081; amended by rule, 39 DCR 1882; June 19, 2013, D.C. Law 19-320, § 301(e), 60 DCR 3390.)

Section references. — This section is referenced in § 7-3002, § 44-1201, § 48-902.01, § 48-902.02, and § 48-1004.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added

(a)(1)(WW) and made related changes; and substituted “Cathine” for “Cathine” (made no change) in (a)(3)(D).

Legislative history of Law 19-320. — See note to § 48-902.01.

Subchapter IV. Offenses and Penalties.

§ 48-904.01. Prohibited acts A; penalties.

(a)(1) Except as authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671 et seq.], it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess, with intent to manufacture or distribute, a controlled substance.

(2) Any person who violates this subsection with respect to:

(A) A controlled substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than the amount set forth in § 22-3571.01, or both;

(B) Any other controlled substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction may be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both; except that upon conviction of manufacturing, distributing or possessing with intent to distribute ½ pound or less of marijuana, a person who has not previously been convicted of manufacturing, distributing or possessing with intent to distribute a controlled substance or attempting to manufacture, distribute, or possess with intent to distribute a controlled substance may be imprisoned for not more than 180 days or fined not more than the amount set forth in § 22-3571.01 or both;

(C) A substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both; or

(D) A substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than the amount set forth in § 22-3571.01, or both.

(b)(1) Except as authorized by this chapter, it is unlawful for any person to create, distribute, or possess with intent to distribute a counterfeit substance.

(2) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in Schedule I or II that is a narcotic or abusive drug shall be imprisoned for not more than 30 years or fined not more than the amount set forth in § 22-3571.01, or both;

(B) Any other counterfeit substance classified in Schedule I, II, or III, except for a narcotic or abusive drug, is guilty of a crime and upon conviction

may be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both;

(C) A counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both; or

(D) A counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than 1 year, fined not more than the amount set forth in § 22-3571.01, or both.

(c) Repealed.

(d)(1) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter or Chapter 16B of Title 7 [§ 7-1671 et seq.], Except as provided in paragraph (2) of this subsection, any person who violates this subsection is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 180 days, fined not more than the amount set forth in § 22-3571.01, or both.

(2) Any person who violates this subsection by knowingly or intentionally possessing the abusive drug phencyclidine in liquid form is guilty of a felony and, upon conviction, may be imprisoned for not more than 3 years, fined not more than the amount set forth in § 22-3571.01, or both.

(e)(1) If any person who has not previously been convicted of violating any provision of this chapter, or any other law of the United States or any state relating to narcotic or abusive drugs or depressant or stimulant substances is found guilty of a violation of subsection (d) of this section and has not previously been discharged and had the proceedings dismissed pursuant to this subsection, the court may, without entering a judgment of guilty and with the consent of such person, defer further proceedings and place him or her on probation upon such reasonable conditions as it may require and for such period, not to exceed one year, as the court may prescribe. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against such person and discharge him or her from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against him or her. Discharge and dismissal under this subsection shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, such person qualifies under this subsection. Such discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime (including the penalties prescribed under § 48-904.08 for second or subsequent convictions) or for any other purpose.

(2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to

the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.

(3) A person who was discharged from probation and whose case was dismissed pursuant to paragraph (1) of this subsection shall be entitled to a copy of the nonpublic record retained under paragraph (1) of this subsection but only to the extent that such record would have been available to the person before an order of expungement was entered pursuant to paragraph (2) of this subsection. A request for a copy of the nonpublic record may be made ex parte and under seal by the person or by an authorized representative of the person.

(f) The prosecutor may charge any person who violates the provisions of subsection (a) or (b) of this section relating to the distribution of or possession with intent to distribute a controlled or counterfeit substance with a violation of subsection (d) of this section if the interests of justice so dictate.

(g) For the purposes of this section, "offense" means a prior conviction for a violation of this section or a felony that relates to narcotic or abusive drugs, marijuana, or depressant or stimulant drugs, that is rendered by a court of competent jurisdiction in the United States.

(Aug. 5, 1981, D.C. Law 4-29, § 401, 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(c)(1), 28 DCR 4348; Mar. 9, 1983, D.C. Law 4-166, §§ 9, 10, 30 DCR 1082; Sept. 26, 1984, D.C. Law 5-121, § 2(a), 31 DCR 4046; Mar. 15, 1985, D.C. Law 5-171, § 2(a), 32 DCR 730; Feb. 28, 1987, D.C. Law 6-201, § 2(c), 34 DCR 524; June 13, 1990, D.C. Law 8-138, § 2(c), 37 DCR 2638; Aug. 20, 1994, D.C. Law 10-151, § 112(a), 41 DCR 2608; May 25, 1995, D.C. Law 10-258, § 3, 42 DCR 238; Apr. 18, 1996, D.C. Law 11-110, § 34(b), 43 DCR 530; June 8, 2001, D.C. Law 13-300, § 2(c), 47 DCR 7037; July 23, 2010, D.C. Law 18-196, § 2, 57 DCR 4522; July 27, 2010, D.C. Law 18-210, § 3(c), 57 DCR 4798; June 11, 2013, D.C. Law 19-317, § 252(a), 60 DCR 2064; June 15, 2013, D.C. Law 19-319, § 5, 60 DCR 2333.)

Section references. — This section is referenced in § 7-403, § 23-546, § 24-112, § 24-221.06, § 24-906, § 48-904.06, § 48-904.07, § 48-904.07a, and § 48-905.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$500,000" in (a)(2)(A); in (a)(2)(B), substituted

the first occurrence of "not more than the amount set forth in § 22-3571.01" for "not more than \$50,000" and the second occurrence for "not more than \$1,000"; substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$25,000" in (a)(2)(C) and for "not more than \$10,000" in (a)(2)(D); in (b)(2), substituted "not more than the amount set forth in § 22-3571.01" for "not more than

\$500,000" in (b)(2)(A), for "not more than \$50,000" in (b)(2)(B), for "not more than \$25,000" in (b)(2)(C), and for "not more than \$10,000" in (b)(2)(D); and in (d), substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (d)(1), and for "not more than \$3,000" in (d)(2).

The 2013 amendment by D.C. Law 19-319 added (e)(3).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to

Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Legislative history of Law 19-319. — Law 19-319, the "Re-entry Facilitation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-889. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-657 and transmitted to Congress for its review. D.C. Law 19-319 became effective on June 15, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CASE NOTES

ANALYSIS

Construction and application.
Construction with other statutes.
Expungement of records.
Weight and sufficiency of evidence.
—Dominion and control, weight and sufficiency of evidence.

Construction and application.

Under D.C. Code § 48-904.01(e)(2), a person with an expunged arrest and conviction cannot be charged with perjury or false statement based on what she says about the underlying incident, but it does not provide that the person need not answer any questions about the arrest, conviction, or conduct; i.e., expungement does not create a testimonial privilege. D.C. Hous. Auth. v. Reid, — WLR —, 2012 D.C. Super. LEXIS 9 (Dec. 17, 2012).

Expungement order issued under D.C. Code § 48-904.01(e) includes all documents that have any connection, association, or relationship to a defendant's arrest, charge, and trial, including all search warrant documents. D.C. Hous. Auth. v. Reid, — WLR —, 2012 D.C. Super. LEXIS 9 (Dec. 17, 2012).

Construction with other statutes.

Where the District of Columbia Housing Authority (DCHA) filed suit to evict its tenant because drugs were sold from her apartment, although records of her arrest and conviction of drug charges had been expunged under D.C. Code § 48-904.01(e), as the expungement did not create a testimonial privilege, she was obligated to respond to the DCHA's interrogatories except to the extent that the response would implicate the arrest, the charge, or the court proceedings. D.C. Hous. Auth. v. Reid, —

WLR —, 2012 D.C. Super. LEXIS 9 (Dec. 17, 2012).

Where the District of Columbia Housing Authority (DCHA) attempted to evict a tenant because drugs were sold from her apartment, the fact that search warrant documents related to her arrest had been expunged under D.C. Code § 48-904.01(e) was not grounds to dismiss the complaint, as the expungement order did not expunge the underlying acts or prevent the DCHA from relying on independently-gathered evidence of the tenant's criminal conduct. D.C. Hous. Auth. v. Reid, — WLR —, 2012 D.C. Super. LEXIS 9 (Dec. 17, 2012).

Expungement of records.

Once a party is on notice of an expungement order, D.C. Code § 48-904.01(e) expunges records and prevents reliance on the fact of a defendant's arrest, charge, or conviction, but does not expunge the underlying conduct or prevent any party from relying on independently-gathered evidence of this conduct. D.C. Hous. Auth. v. Reid, — WLR —, 2012 D.C. Super. LEXIS 9 (Dec. 17, 2012).

Weight and sufficiency of evidence.

— Dominion and control, weight and sufficiency of evidence.

Defendant's conviction of possession with intent to distribute a controlled substance (D.C. Code § 48-904.01(a)(1)) was reversed, as his sitting in the backseat of a car near a closed cooler containing marijuana that was packaged as if for sale was insufficient to prove that he had the requisite intent to exercise dominion or control over the drugs. Jackson v. United States, — A.3d —, 2013 D.C. App. LEXIS 61 (Mar. 7, 2013).

§ 48-904.02. Prohibited acts B; penalties.

(a) It is unlawful for any person:

(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 48-903.08;

(2) Who is a registrant, to manufacture a controlled substance not authorized by registration, or to distribute or dispense a controlled substance not authorized by registration to another registrant or other authorized person;

(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(4) To refuse an entry into any premises for any inspection authorized by this chapter;

(5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter;

(6) Who is a law-enforcement official, as designated by the Mayor, or a designated civilian employee of the Metropolitan Police Department, to divulge any knowledge relating to the records, order forms, or prescriptions of registrants which he or she received by virtue of his or her office, except in connection with officially authorized duties or in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the registrant to whom such records, order forms, or prescriptions relate is a party; or

(7) To use to his or her own advantage or to reveal, other than to duly authorized officers or employees of the District of Columbia or the United States, or to the courts when relevant in any judicial proceeding under this subchapter or subchapter III of this chapter, any information acquired in the course of an authorized inspection concerning any method or process which as a trade secret is entitled to protection.

(b) Except as provided for in subsection (c) of this section, any person who violates this section shall, with respect to any violation, be subject to a civil penalty of not more than \$50,000.

(c) If a violation of this section is prosecuted by an information or indictment which alleges that the violation was committed knowingly and the trier of fact specifically finds that the violation was so committed, such person shall be guilty of a crime and upon conviction may be imprisoned for not more than one year, fined not more than the amount set forth in § 22-3571.01, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 402, 28 DCR 3081; June 12, 1999, D.C. Law 12-284, § 10(b), 46 DCR 1328; June 11, 2013, D.C. Law 19-317, § 252(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$50,000” in (c).

Legislative history of Law 19-317. — See note to § 48-904.01.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 48-904.03. Prohibited acts C; penalties.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 48-903.07;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;

(4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than 4 years, fined not more than the amount set forth in § 22-3571.01, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 403, 28 DCR 3081; June 11, 2013, D.C. Law 19-317, § 252(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$50,000” in (b).

Legislative history of Law 19-317. — See note to § 48-904.01.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 48-904.03a. Prohibited acts D; penalties.

(a) It shall be unlawful for any person to knowingly open or maintain any place to manufacture, distribute, or store for the purpose of manufacture or distribution a narcotic or abusive drug.

(b) Any person who violates this section shall be imprisoned for not less than 5 years nor more than 25 years, fined not more than the amount set forth in § 22-3571.01, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 411, as added June 13, 1990, D.C. Law 8-138, § 2(e), 37 DCR 2638; June 11, 2013, D.C. Law 19-317, § 252(f), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500,000” in (b).

Legislative history of Law 19-317. — See note to § 48-904.01.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401

of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 48-904.07. Enlistment of minors to distribute.

(a) Any person who is 21 years of age or over and who enlists, hires, contracts, or encourages any person under 18 years of age to sell or distribute any controlled substance, in violation of § 48-904.01(a), for the profit or benefit of such person who enlists, hires, contracts, or encourages this criminal activity shall be punished for sale or distribution in the same manner as if that person directly sold or distributed the controlled substance.

(b) Anyone found guilty of subsection (a) of this section shall be subject to the following additional penalties:

(1) Upon a first conviction the party may be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both;

(2) Upon a second or subsequent conviction, the party may be imprisoned for not more than 20 years, fined not more than the amount set forth in § 22-3571.01, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 407, 28 DCR 3081; June 11, 2013, D.C. Law 19-317, § 252(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$10,000” in (b)(1), and for “not more than \$20,000” in (b)(2).

Legislative history of Law 19-317. — See note to § 48-904.01.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 48-904.08. Second or subsequent offenses.

(a) Any person convicted under this unit of a second or subsequent offense may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense if, prior to commission of the offense, the offender has at any time been convicted under this unit or under any statute of the United States or of any state relating to a controlled substance.

(c) A person who is convicted of violating § 48-904.06 may be sentenced according to the provisions of § 48-904.06 or according to the provisions of this section, but not both.

(Aug. 5, 1981, D.C. Law 4-29, § 408, 28 DCR 3081; June 19, 2013, D.C. Law 19-320, § 301(f), 60 DCR 3390.)

Section references. — This section is referenced in § 48-904.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 substituted “convicted under this chapter of a second or subsequent offense” for “convicted of a second

or subsequent offense under this chapter” in (a); and substituted “a controlled substance” for “narcotic drugs, depressants, stimulants, or hallucinogenic drugs” in (b).

Legislative history of Law 19-320. — Law 19-320, the “Omnibus Criminal Code Amend-

ments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by

the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 48-904.10. Possession of drug paraphernalia.

Whoever, except for a physician, dentist, chiroprapist, or veterinarian licensed in the District of Columbia or a state, registered nurse, registered embalmer, manufacturer or dealer in embalming supplies, wholesale druggist, industrial user, official of any government having possession of the proscribed articles by reason of his or her official duties, nurse or medical laboratory technician acting under the direction of a physician or dentist, employees of a hospital or medical facility acting under the direction of its superintendent or officer in immediate charge, person engaged in chemical, clinical, pharmaceutical or other scientific research, acting in the course of their professional duties, has in his or her possession a hypodermic needle, hypodermic syringe, or other instrument that has on or in it any quantity (including a trace) of a controlled substance with intent to use it for administration of a controlled substance by subcutaneous injection in a human being shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

(Aug. 5, 1981, D.C. Law 4-29, § 410, 28 DCR 3081; Aug. 20, 1994, D.C. Law 10-151, § 112(b), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 252(e), 60 DCR 2064.)

Section references. — This section is referenced in § 7-403 and § 48-1103.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000”.

Legislative history of Law 19-317. — See note to § 48-904.01.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Unit B. General.

Subchapter VIII. Searches Involving Controlled Substances.

§ 48-921.02. Search warrants; issuance, execution and return; property inventory; filing of proceedings; interference with service.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States Magistrate for the District of Columbia when any controlled substances are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of the District of Columbia Uniform Controlled Substances Act of 1981 [D.C. Law 4-29], and any such controlled substances and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding may be seized thereunder, and shall be subject to

such disposition as the Court may make thereof and such controlled substances may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or Magistrate must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or Magistrate is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him, to the Chief of Police of the District of Columbia or any member of the Metropolitan Police Department, the Chief or any member of the District of Columbia Housing Authority Police Department, or the Chief or any member of the United States Park Police, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding the Chief of Police or member of the Metropolitan Police Department, the Chief or member of the District of Columbia Housing Authority Police Department, or the Chief or member of the United States Park Police forthwith to search the place named for the property specified and to bring it before the judge or Magistrate.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or Magistrate shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or Magistrate who issued it within 10 days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer or the designated civilian employee of the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer or the designated civilian employee of the Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police must forthwith return the warrant to the judge or Magistrate and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it

was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or Magistrate at the time, to the following in effect: "I, _____, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(l) The judge or Magistrate must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or Magistrate must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the Clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 2 years.

(June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k); July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Aug. 5, 1981, D.C. Law 4-29, § 604(b)(4), 28 DCR 3081; Nov. 17, 1981, D.C. Law 4-52, § 3(d), 28 DCR 4348; Aug. 2, 1983, D.C. Law 5-24, § 14, 30 DCR 3341; May 10, 1989, D.C. Law 7-231, § 42(b), 36 DCR 492; June 13, 1990, D.C. Law 8-138, § 4, 37 DCR 2638; Mar. 7, 1991, D.C. Law 8-227, § 3, 38 DCR 224; June 12, 1999, D.C. Law 12-284, § 11, 46 DCR 1328; Apr. 12, 2005, D.C. Law 15-337, § 3, 52 DCR 2278; June 11, 2013, D.C. Law 19-317, § 252(f), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (n).

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 10. DRUG FREE ZONES.

Sec.
48-1005. Penalties.

§ 48-1005. Penalties.

Any person who violates § 48-1004 shall, upon conviction, be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisonment for not more than 180 days, or both.

(June 3, 1997, D.C. Law 11-270, § 6, 43 DCR 4493; June 11, 2013, D.C. Law 19-317, § 253, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 11. DRUG PARAPHERNALIA.

Subchapter I. General

Sec.

48-1103. Prohibited acts.

Subchapter I. General.

§ 48-1103. Prohibited acts.

(a) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inhale, ingest, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 30 days or fined for not more than the amount set forth in § 22-3571.01, or both.

(b) Except as authorized by Chapter 16B of Title 7 [§ 7-1671.01 et seq.], it is unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia, knowingly, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Whoever violates this subsection shall be imprisoned for not more than 6 months or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than \$5,000, or both.

(c) Any person 18 years of age or over who violates subsection (b) of this section by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his or her junior is guilty of a special offense and upon conviction may be imprisoned for not more than 8 years, fined not more than the amount set forth in § 22-3571.01, or both.

(d) Where the violation of the section involves the selling of drug paraphernalia by a commercial retail or wholesale establishment, the court shall revoke the license of any licensee convicted of a violation of this section and the certificate of occupancy for the premises.

(e)(1) Except as provided in paragraphs (2), (3), and (3A) of this subsection, it is unlawful to sell the following products in the District of Columbia:

- (A) Cocaine free base kits;
- (B) Glass or ceramic tubes less than 6 inches in length and 1 inch in diameter sold or possessed with or without any screen-like device;
- (C) Cigarette rolling papers; and
- (D) Cigar wrappers, including blunt wraps.

(2) A commercial retail or wholesale establishment may sell cigarette rolling papers if the establishment:

(A) Derives at least 25% of its total annual revenue from the sale of tobacco products; and

(B) Sells loose tobacco intended to be rolled into cigarettes or cigars.

(3) A wholesaler may sell cigarette rolling papers to retail establishments described in paragraph (2) of this subsection.

(3A) A cultivation center or dispensary may sell cigarette rolling papers in accordance with Chapter 16B of Title 7 [§ 7-1671.01 et seq.].

(4) A person who violates this subsection shall be imprisoned for not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted in the District of Columbia of a violation of this subchapter, in which case the person shall be imprisoned for not more than 2 years, or fined not more than the amount set forth in § 22-3571.01, or both.

(Sept. 17, 1982, D.C. Law 4-149, § 4, 29 DCR 3369; Mar. 14, 1985, D.C. Law 5-159, § 14, 32 DCR 30; June 13, 1990, D.C. Law 8-138, § 3(b), 37 DCR 2638; Apr. 9, 1997, D.C. Law 11-213, § 2(c), 43 DCR 4990; Apr. 24, 2007, D.C. Law 16-306, § 227(c), 53 DCR 8610; July 23, 2010, D.C. Law 18-189, § 5(b), 57 DCR 3019; July 27, 2010, D.C. Law 18-210, § 3(d), 57 DCR 4798; Sept. 26, 2012, D.C. Law 19-171, § 138, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 254, 60 DCR 2064.)

Section references. — This section is referenced in § 7-403, § 48-1102, § 48-1103.01, and § 48-1104.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$100” in (a); in (b), substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “for not more than \$1,000” and the

second occurrence for “not more than \$5,000”; substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$15,000” in (c); and, in (e)(4), substituted the first occurrence of “not more than the amount set forth in § 22-3571.01” for “for not more than \$1,000” and the second occurrence for “not more than \$5,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to

Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

TITLE 49. MILITARY.

SUBTITLE III. MILITARY COMPACTS.

Chapter

11. Interstate Compact on Educational Opportunity for Military Children.

SUBTITLE III. MILITARY COMPACTS.

CHAPTER 11. INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN.

Sec.

- 49-1101.01. Adoption of Compact.
- 49-1101.02. Purpose and policy.
- 49-1101.03. Definitions.
- 49-1101.04. Applicability.
- 49-1101.05. Educational records and enrollment.
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- 49-1101.08. Graduation.
- 49-1101.09. Interstate Commission on Educational Opportunity for Military Children.
- 49-1101.10. Powers and duties of the Interstate Commission.
- 49-1101.11. Organization and operation of the Interstate Commission.

Sec.

- 49-1101.12. Rulemaking functions of the Interstate Commission.
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- 49-1101.16. Member states, effective date, and amendment.
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- 49-1101.18. Severability and construction.
- 49-1101.19. Binding effect of compact and other laws.
- 49-1101.20. District of Columbia State Interstate Compact Council.

§ 49-1101.01. Adoption of Compact.

The District of Columbia adopts the Interstate Compact on Educational Opportunity for Military Children.

(May 1, 2013, D.C. Law 19-304, § 2, 60 DCR 2717.)

Legislative history of Law 19-304. — Law 19-304, the "Interstate Compact on Educational Opportunity for Military Children Establishment Act of 2012," was introduced in Council and assigned Bill No. 19-328. The Bill was adopted on first and second readings on Decem-

ber 4, 2012 and December 18, 2012, respectively. Returned without signature by the Mayor on February 11, 2013, it was assigned Act No. 19-671 and transmitted to Congress for its review. D.C. Law 19-304 became effective on May 1, 2013.

§ 49-1101.02. Purpose and policy.

It is the purpose of the Interstate Compact on Educational Opportunity for Military Children to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(1) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of educational records from the previous school district or variations in entrance or age requirements;

(2) Facilitating the student-placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

(3) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

(4) Facilitating the on-time graduation of children of military families;

(5) Providing for the promulgation and enforcement of administrative rules implementing the provisions of the Interstate Compact on Educational Opportunity for Military Children;

(6) Providing for the uniform collection and sharing of information between and among member states, schools, and military families;

(7) Promoting coordination between the Interstate Compact on Educational Opportunity for Military Children and other compacts affecting military children; and

(8) Promoting flexibility and cooperation between the educational system, parents, and students to achieve educational success for the students.

(May 1, 2013, D.C. Law 19-304, § 3, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.03. Definitions.

For the purposes of this chapter, unless the context clearly requires a different construction, the term:

(1) “Active duty” means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. §§ 1209 and 1211.

(2) “Children of military families” means school-aged children, enrolled in Kindergarten through 12th grade in the household of an active duty member.

(3) “Compact” means the Interstate Compact on Educational Opportunity for Military Children.

(4) “Compact commissioner” means the voting representative of each compacting state appointed pursuant to § 49-1101.09.

(5) “Deployment” means the period one month before a service member’s departure from the home station on military orders through 6 months after return to the home station.

(6) "Educational records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance, records of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(7) "Extracurricular activities" means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(8) "Interstate Commission on Educational Opportunity for Military Children" means the commission that is created in § 49-1101.09, generally referred to as the Interstate Commission.

(9) "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through 12th grade public educational institutions.

(10) "Member state" means a state that has enacted this compact.

(11) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility that is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. Territory. The term does not include any facility used primarily for civil works, river and harbor projects, or flood-control projects.

(12) "Non-member state" means a state that has not enacted this compact.

(13) "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(14) "Rule" means a written statement by the Interstate Commission promulgated pursuant to § 49-1101.12 that is of general applicability and implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

(15) "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(16) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. Territory.

(17) "State Council" means the District of Columbia Educational Opportunity for Military Children State Council established in § 49-1101.20.

(18) "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in a grade from kindergarten through 12th grade.

(19) "Transition" means:

(A) The formal and physical process of transferring from school to school; or

(B) The period of time in which a student moves from one school in the sending state to another school in the receiving state.

(20) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, and Coast Guard, as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

(21) "Veteran" means a person who served in the uniformed services and who was discharged or released under conditions other than dishonorable.

(May 1, 2013, D.C. Law 19-304, § 4, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.04. Applicability.

(a) Except as otherwise provided in subsection (b) of this section, this compact shall apply to the children of:

(1) Active duty members of the uniformed services;

(2) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

(3) Members of the uniformed services who have died on active duty or as a result of injuries sustained on active duty for a period of one year after death.

(b) The provisions of this compact shall only apply to local education agencies as defined in this compact.

(c) The provisions of this compact shall not apply to the children of:

(1) Inactive members of the National Guard and military reserves;

(2) Members of the uniformed services now retired, except as provided in subsection (a) of this section;

(3) Veterans of the uniformed services, except as provided in subsection (a) of this section; or

(4) Other U.S. Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

(May 1, 2013, D.C. Law 19-304, § 5, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.05. Educational records and enrollment.

(a) If official educational records cannot be released to the parents of a student for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial educational records by a school in the receiving state, the school shall enroll and appropriately place the

student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

(b) Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official educational record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official educational record to the school in the receiving state within 10 days or within such time as is reasonably established under the rules promulgated by the Interstate Commission.

(c) Compacting states shall give students 30 days from the date of enrollment, or such time as is reasonably established under the rules promulgated by the Interstate Commission, to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days, or within such time as is reasonably established under the rules promulgated by the Interstate Commission.

(d) Students shall be allowed to continue their enrollment at the grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on his or her validated level from an accredited school in the sending state.

(May 1, 2013, D.C. Law 19-304, § 6, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.06. Placement and attendance.

(a)(1) When a student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes Honors, International Baccalaureate, Advanced Placement, vocational, and technical and career-pathways courses.

(2) Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in a course.

(b) The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include gifted and talented programs and English-as-a-second-language programs. This does not preclude

the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(c)(1) In compliance with the federal requirements of the Individuals with Disabilities Education Improvement Act, approved December 3, 2004 (118 Stat. 2647; 20 U.S.C. § 1400 et seq.), the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program; and

(2) In compliance with the requirements of section 504 of the Rehabilitation Act of 1973, approved September 26, 1973 (87 Stat. 394; 29 U.S.C. § 794), and with Title II of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 327; 42 U.S.C. §§ 12131-12165), the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This requirement does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(d) Local education agency administrative officials shall have flexibility in waiving course and program prerequisites and other preconditions for placement in courses and programs offered under the jurisdiction of the local education agency.

(e) A student whose parent, or legal guardian, is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat-support posting shall be granted additional excused absences at the discretion of the local education agency to visit with his or her parent or legal guardian based on the leave or deployment of the parent or guardian.

(May 1, 2013, D.C. Law 19-304, § 7, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.07. Eligibility for enrollment.

(a) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(b) A local education agency shall be prohibited from charging local tuition to a transitioning student placed in the care of a non-custodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(c) A transitioning student placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

(d) State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regard-

less of application deadlines, to the extent they are otherwise qualified to be included.

(May 1, 2013, D.C. Law 19-304, § 8, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.08. Graduation.

(a) To facilitate the on-time graduation of children of military families, states and local education agencies shall adopt the following procedures:

(1) Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for the denial of a waiver. If a waiver is not granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means for the student to acquire the required coursework so that his or her graduation may occur on time.

(2) States shall accept:

(A) Exit or end-of-course exams required for graduation from the sending state;

(B) National norm referenced achievement tests; or

(C) Alternative testing, in lieu of testing requirements for graduation in the receiving state. If the above-referenced alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of subsection (b) of this section shall apply.

(b) Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. If one of the states in question is not a member of this compact, the member state shall use its best efforts to facilitate the on-time graduation of the student in accordance with subsection (a) of this section.

(May 1, 2013, D.C. Law 19-304, § 9, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.09. Interstate Commission on Educational Opportunity for Military Children.

(a) The member states hereby create the Interstate Commission on Educational Opportunity for Military Children. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(b) The Interstate Commission shall:

(1) Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth in this chapter, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;

(2) Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner;

(3) Consist of ex-officio, non-voting representatives who are members of interested organizations, which, as defined in the bylaws, may include members of:

(A) The representative organizations of military family advocates;

(B) Local education agency officials;

(C) Parent and teacher groups;

(D) The U.S. Department of Defense;

(E) The Education Commission of the States;

(F) The Interstate Agreement on Qualification of Educational Personnel; and

(G) Other interstate compacts affecting the education of children of military members;

(4) Meet at least once each calendar year; provided, that chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

(5) Establish an executive committee, which shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session and whose members shall:

(A) Include the officers of the Interstate Commission, and such other members of the Interstate Commission as determined by the bylaws, and a delegate of the U.S. Department of Defense, who shall serve as an ex-officio, nonvoting member;

(B) Serve a one-year term and be entitled to one vote each; and

(C) Oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as considered necessary;

(6) Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying; provided, that it may exempt from disclosure, information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Give public notice of all meetings and conduct all meetings open to the public, except as set forth in the rules or as otherwise provided in the compact; provided, that the Interstate Commission and its committees may close a meeting, or a portion thereof, when it determines by two-thirds vote that an open meeting would be likely to:

(A) Relate solely to the Interstate Commission's internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by federal and state statute;

(C) Disclose trade secrets or commercial or financial information that is privileged or confidential;

(D) Involve accusing a person of a crime or formally censuring a person;

(E) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(F) Disclose investigative records compiled for law enforcement purposes; or

(G) Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding;

(8) Cause its legal counsel, or designee, to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, that is closed pursuant to this provision;

(9) Keep minutes that shall fully and clearly describe all matters discussed in the meeting and shall provide a full and accurate summary of actions taken, and the reasons for those actions, including a description of the views expressed, the record of a roll-call vote, and the identification of all documents considered in connection with an action; provided, that all minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission;

(10) Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules, which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements; provided, that the methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and be in coordination its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(11) Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency.

(c)(1) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(2) A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

(3) A representative shall not delegate a vote to another member state. If the compact commissioner is unable to attend a meeting of the Interstate Commission, the Mayor or the Council of the District of Columbia may delegate voting authority to another person from the District of Columbia for a specified meeting.

(4) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(d) This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

(May 1, 2013, D.C. Law 19-304, § 10, 60 DCR 2717.)

Section references. — This section is referenced in § 49-1101.03 and § 49-1101.10.

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.10. Powers and duties of the Interstate Commission.

The Interstate Commission shall have the power to:

- (1) Provide for dispute resolution among member states;
- (2) Promulgate rules and take all necessary actions to effect its goals, purposes, and obligations as enumerated in this compact; which rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;
- (3) Issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules, or actions;
- (4) Enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws using all necessary and proper means, including the use of the judicial process;
- (5) Establish and maintain offices, which shall be located within one or more of the member states;
- (6) Purchase and maintain insurance and bonds;
- (7) Borrow, accept, hire, or contract for services of personnel;
- (8) Establish and appoint committees, including the executive committee required by § 49-1101.09(b)(5), which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties;
- (9) Elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) Accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same;
- (11) Lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;
- (12) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (13) Establish a budget and make expenditures;
- (14) Adopt a seal and bylaws governing the management and operation of the Interstate Commission;
- (15) Report annually to the legislatures, governors, the Mayor of the District of Columbia, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year, including any recommendations that may have been adopted by the Interstate Commission;
- (16) Coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in compact activities;
- (17) Establish uniform standards for the reporting, collecting, and exchanging of data;

(18) Maintain corporate books and records in accordance with the bylaws;

(19) Perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

(20) Provide for the uniform collection and sharing of information between and among member states and the schools and military families affected under this compact.

(May 1, 2013, D.C. Law 19-304, § 11, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.11. Organization and operation of the Interstate Commission.

(a) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

(6) Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment of, and the reservation of funds for payment of, all of its debts and obligations; and

(7) Providing start-up rules for the initial administration of the compact.

(b) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission.

(c) The officers elected pursuant to subsection (b) of this section shall serve without compensation or remuneration from the Interstate Commission; provided, that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred in the performance of their responsibilities as officers of the Interstate Commission.

(d)(1) The executive committee shall have such authority and duties as may be set forth in the bylaws, which shall include:

(A) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(B) Overseeing an organizational structure and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(C) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission considers appropriate.

(3) The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission.

(4) The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(e) The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(f)(1) The liability of the Interstate Commission's executive director and its employees or Interstate Commission representatives, acting within the scope of their employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action.

(2) Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(g) The Interstate Commission shall defend the executive director and its employees, and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(h) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate

Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities; provided, that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

(May 1, 2013, D.C. Law 19-304, § 12, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.12. Rulemaking functions of the Interstate Commission.

(a) The Interstate Commission shall promulgate reasonable rules to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, if the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this chapter or the powers granted pursuant to this chapter, then such exercise by the Interstate Commission shall be invalid and have no force or effect.

(b) Rules shall be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act (1981), Uniform Laws Annotated, Vol. 15, p.1 (2000), as amended, as may be appropriate to the operations of the Interstate Commission.

(c) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(d) If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

(May 1, 2013, D.C. Law 19-304, § 13, 60 DCR 2717.)

Section references. — This section is referenced in § 49-1101.03.

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.13. Oversight, enforcement, and dispute resolution.

(a)(1) The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions

necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission.

(3)(A) The Interstate Commission shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

(B) Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

(b)(1) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the Interstate Commission shall:

(A) Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission; provided, that the Interstate Commission shall specify the conditions by which the defaulting state must cure its default;

(B) Provide remedial training and specific technical assistance regarding the default; and

(C) If the defaulting state fails to cure the default, terminate the defaulting state from the compact upon an affirmative vote of a majority of the member states, along with all rights, privileges, and benefits conferred by this compact from the effective date of termination.

(2) A cure of the default shall not relieve the offending state of obligations or liabilities incurred during the period of the default.

(3) Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Mayor and the Council, and each of the member states.

(4) The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(5) The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact, unless it is otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(6) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

(c)(1) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and which may arise among member states and between member and non-member states.

(2) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(d)(1) The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) The Interstate Commission may, by majority vote of the members, initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, or its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

(May 1, 2013, D.C. Law 19-304, § 14, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.14. Financing of the Interstate Commission.

(a) The Interstate Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based on a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(c) The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same or pledge the credit of any of member state, except by and with the authority of the member state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and a report of the audit shall be included in and become part of the annual report of the Interstate Commission.

(May 1, 2013, D.C. Law 19-304, § 15, 60 DCR 2717.)

Legislative history of Law 19-304. — See
note to § 49-1101.01.

§ 49-1101.15. Local agency participation.

(a) Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities.

(b) Each member state may determine the membership of its own State Council; provided, that its membership includes:

- (1) The State Superintendent of Education;
- (2) A representative from a military installation;
- (3) One representative each from the legislative and executive branches of government; and

(4) Representatives of other offices and stakeholder groups the State Council considers appropriate.

(c) A member state that does not have a school district considered to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

(d) The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(e) The compact commissioner responsible for the administration and management of the state's participation in the compact, in the case of the District of Columbia, shall be appointed by the Mayor, or as otherwise determined by this member state.

(f) The compact commissioner and the appointed or designated military family education liaison shall be ex-officio members of the State Council, unless there is already a full-voting member of the State Council.

(May 1, 2013, D.C. Law 19-304, § 16, 60 DCR 2717.)

Legislative history of Law 19-304. — See
note to § 49-1101.01.

§ 49-1101.16. Member states, effective date, and amendment.

(a) Any state is eligible to become a member state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by no fewer than 10 states. The effective date shall be no earlier than December 1, 2007. After December 1, 2007, it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of non-member states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

(May 1, 2013, D.C. Law 19-304, § 17, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01. on Educational Opportunity for Military Children was formally adopted by 10 states in August 2008.
Editor's notes. — The Interstate Compact

§ 49-1101.17. Withdrawal and dissolution.

(a) Once effective, the compact shall continue in force and remain binding upon each and every member state; provided, that a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

(b) Withdrawal from this compact shall be by the enactment of a statute repealing the statute that enacted the compact into law, but the repeal shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

(c) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice of withdrawal.

(d) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including the performance of obligations that extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

(f)(1) This compact shall dissolve effective upon the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds distributed in accordance with the bylaws.

(May 1, 2013, D.C. Law 19-304, § 18, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.18. Severability and construction.

(a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.

(c) Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

(May 1, 2013, D.C. Law 19-304, § 19, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.19. Binding effect of compact and other laws.

(a) Nothing in this chapter prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(b)(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

(May 1, 2013, D.C. Law 19-304, § 20, 60 DCR 2717.)

Legislative history of Law 19-304. — See note to § 49-1101.01.

§ 49-1101.20. District of Columbia State Interstate Compact Council.

(a) There is established the District of Columbia Educational Opportunity for Military Children State Council. The State Council shall be composed of 7 members. The State Council shall provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, the compact. The members of the State Council shall be:

- (1) The Chairman of the Council, or his or her designee;
- (2) The Mayor, or his or her designee;
- (3) The State Superintendent of Education;
- (4) A representative from a District military installation appointed by the U.S. Department of Defense;
- (5) The Chancellor, or his or her designee;

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(6) A public charter school leader designated by the Chairman of the Public Charter School Board; and

(7) A parent representative appointed by the Mayor. (b) Five members of the State Council shall constitute a quorum for the transaction of official business and the issuance of rules and regulations.

(c)(1) The Mayor shall designate a chairman of the State Council from among its members.

(2) The State Council shall meet at least 3 times in each year on the call of its chairman or at the request of a majority of its members.

(May 1, 2013, D.C. Law 19-304, § 21, 60 DCR 2717.)

Section references. — This section is referenced in § 49-1101.03.

Legislative history of Law 19-304. — See note to § 49-1101.01.

**TITLE 50. MOTOR AND NON-MOTOR
VEHICLES AND TRAFFIC.**

SUBTITLE I. COMMERCIAL AND GOVERNMENT VEHICLES.

Chapter

3. Regulation of Taxicabs.

4. Uniform Classification and Commercial Driver's License.

SUBTITLE II. CONSUMER PROTECTION.

6. Installment Sales of Motor Vehicles.

**SUBTITLE IV. MOTORIZED VEHICLE REGISTRATION, INSPECTION,
LICENSING.**

9A. Department of Transportation.

11. Inspection.

12. Liens on Motor Vehicles or Trailers.

13. Motor Vehicle Owners and Operators Responsibility.

13A. Salvage, Flood Notification and Non-Repairable Vehicle Certification.

14. Operators' Permits and Identification Cards.

15. Registration of Motor Vehicles.

SUBTITLE V. NON-MOTORIZED VEHICLES.

16. Regulation of Bicycles.

SUBTITLE VI. SAFETY.

19. Motor Vehicle Operators; Implied Consent to Chemical Testing.

21A. Safety Impact of Fine Reductions.

SUBTITLE VII. TRAFFIC.

Chapter

- 22. Regulation of Traffic.
- 23. Traffic Adjudication.
- 23A. Autonomous Vehicles.

SUBTITLE VIII. VEHICLES ON PUBLIC AND PRIVATE SPACE.

- 24. Abandoned and Junk Vehicle Removal.
- 26. Regulation of Parking.

SUBTITLE I. COMMERCIAL AND GOVERNMENT
VEHICLES.

CHAPTER 3. REGULATION OF TAXICABS.

Subchapter I. General

- Sec.
- 50-325. Accessible taxicabs. [Not funded].
 - 50-326. Modernization of taxicabs. [Not funded].
 - 50-327. Fuel-efficient taxicabs. [Not funded].
 - 50-328. Loitering of public vehicles-for-hire. [Not funded].
 - 50-329. Public vehicles-for-hire, exclusive of taxicabs and limousines. [Not funded].
 - 50-329.01. Public vehicle inspection officer training. [Not funded].
 - 50-329.02. Dispatch services. [Not funded].

Sec.

- 50-329.03. Complaints. [Not funded].
- 50-329.04. Dome light and Taxicab Smart Meter System installation businesses. [Not funded].
- 50-329.05. Fleeing from a public vehicle inspection officer in a public vehicle-for-hire.

Subchapter III. Payment of Taxicab Charge

- 50-351. Payment of taxicab charge.

Subchapter IV. Loitering By Taxicabs

- 50-371. Loitering of public cabs.

Subchapter I. General.

§ 50-303. Definitions.

Section references. — This section is referenced in § 22-404.02, § 22-404.03, and § 50-2201.03.

Editor's notes.

Section 2(a) of D.C. Law 19-270 would have rewritten (20).

Section 5 of D.C. Law 19-270 provided that

the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-307. Duties of Commission; jurisdiction, powers, and duties of Commission panels.

Section references. — This section is referenced in § 50-306, § 50-308, § 50-309, and § 50-310.

Editor's notes.

Section 2(b) of D.C. Law 19-270 would have added (c)(20) to the version of this section as amended by D.C. Law 19-184, and made related changes.

Section 2(c) of D.C. Law 19-270 would have added § 50-307.02, concerning reciprocal agreements.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-319. Regulation of taxicab operation and license requirement.

Section references. — This section is referenced in § 50-331.

Editor's notes.

Section 2(d) of D.C. Law 19-270 would have deleted "including dispatch service" and its surrounding commas in (a)(1); and deleted the last sentence in (d).

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-320. District of Columbia Taxicab Commission Fund; established.

Editor's notes.

Section 2(e) of D.C. Law 19-270 would have added (a)(5) and made related changes.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its

fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-324. Wheelchair-Accessible Taxicab Promotion Fund.

Editor's notes. — Section 2(r) of D.C. Law 19-184, effective October 22, 2012, repealed this section subject to the inclusion of its fiscal effect in an approved budget and financial plan,

as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-325. Accessible taxicabs. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20f, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — Law 19-184, the "Taxicab Service Improvement Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-630. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on Aug. 2, 2012, it was assigned Act No. 19-437 and transmitted to Congress for its review. D.C. Law 19-184 became effective on Oct. 22, 2012.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved

budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(f) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20f, as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-326. Modernization of taxicabs. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20g, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the

inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-327. Fuel-efficient taxicabs. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20h, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(g) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20h(b), as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-328. Loitering of public vehicles-for-hire. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20i, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(h) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20i, as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329. Public vehicles-for-hire, exclusive of taxicabs and limousines. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20j, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(i) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20j, as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329.01. Public vehicle inspection officer training. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20k, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the

inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329.02. Dispatch services. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20l, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(j) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20l, as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329.03. Complaints. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20m, as added October 22, 2012, D.C. Law 19-184, § 2(s), 59 DCR 9431.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-184. — See note to § 50-325.

Editor's notes. — Section 7 of D.C. Law 19-184 provided that act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

Section 2(k) of D.C. Law 19-270 would have amended D.C. Law 6-97, § 20m(1), as enacted by D.C. Law 19-184, had that act been funded.

Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329.04. Dome light and Taxicab Smart Meter System installation businesses. [Not funded].

[Not funded].

(Mar. 25, 1986, D.C. Law 6-97, § 20n, as added October 22, 2012, D.C. Law 19-270, § 2(1), 60 DCR 1717.)

Effect of amendments. — The 2013 amendment added this section.

Legislative history of Law 19-270. — Law 19-270, the "Public Vehicle-for-Hire Innovation Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-892. The Bill was adopted on first and second readings on Nov. 15, 2012, and Dec. 4, 2012, respectively. Signed by the Mayor on Jan. 18, 2013, it was assigned Act No. 19-631 and transmitted to

Congress for its review. D.C. Law 19-270 became effective on Apr. 23, 2013.

Editor's notes. — Section 5 of D.C. Law 19-270 provided that the act shall apply upon the inclusion of its fiscal effect in an approved budget and financial plan, as certified by the Chief Financial Officer to the Budget Director of the Council in a certification published by the Council in the District of Columbia Register.

§ 50-329.05. Fleeing from a public vehicle inspection officer in a public vehicle-for-hire.

(a)(1) An operator of a public vehicle-for-hire who knowingly fails or refuses to bring the public vehicle-for-hire to an immediate stop, or who flees or attempts to elude a public vehicle inspection officer, following the public vehicle inspection officer's signal to bring the public vehicle-for-hire to a stop, shall be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 180 days.

(2) An operator of a public vehicle for hire who violates paragraph (1) of this subsection and while doing so drives the public vehicle-for-hire in a manner that would constitute reckless driving under § 50-2201.04(b), or cause property damage or bodily injury, shall be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 5 years.

(b) It is an affirmative defense under this section if the operator of a public vehicle-for-hire can show, by a preponderance of the evidence, that his or her failure to stop immediately was based upon a reasonable belief that his or her personal safety or the safety of passengers was at risk. In determining whether the operator has met this burden, the court may consider the following factors:

(1) The time and location of the event;

(2) Whether the public vehicle inspection officer was in a vehicle clearly identifiable by its markings, or if unmarked, was occupied by a public vehicle inspection officer in uniform or displaying a badge or other sign of authority;

(3) The conduct of the public vehicle-for-hire operator while being followed by the public vehicle inspection officer;

(4) Whether the public vehicle-for-hire operator stopped at the first available reasonably lighted or populated area; and

(5) Any other factor the court considers relevant.

(c)(1)(A) The Chairperson of the Commission shall suspend the license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to this subchapter, of a person convicted under subsection (a)(1) of this section for a minimum of 30 days, but no more than 180 days, without further administrative action by the Commission.

(B) The Chairperson of the Commission may suspend the license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to this subchapter, of a person convicted under subsection (a)(2) of this section for a period of no more than one year without further administrative action by the Commission.

(2) A suspension of a public vehicle-for-hire operator's license or licenses under paragraph (1) of this subsection for a person who has been sentenced to a term of imprisonment for a violation of subsection (a)(1) or (2) of this section shall begin following the person's release from incarceration.

(Mar. 25, 1986, D.C. Law 6-97, § 20o, as added June 19, 2013, D.C. Law 19-320, § 402, 60 DCR 3390.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-320 added this section.

Emergency legislation. — For temporary addition of section, see § 402 of the Omnibus Criminal Code Amendments Emergency Amendment Act of 2012 (D.C. Act 19-599, January 14, 2013, 60 DCR 1017).

Legislative history of Law 19-320. — Law

19-320, the "Omnibus Criminal Code Amendments Act of 2012," was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

Subchapter III. Payment of Taxicab Charge.

§ 50-351. Payment of taxicab charge.

No person who engages a taxicab shall refuse or fail to pay or attempt to avoid payment of the lawful charge due the driver or owner of the taxicab. Any person who violates this section shall upon conviction be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 10 days.

(Feb. 26, 1981, D.C. Law 3-117, § 2, 27 DCR 5636; June 11, 2013, D.C. Law 19-317, § 261, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "of not more than \$300".

Legislative history of Law 19-317. — Law 19-317, the "Criminal Fine Proportionality

Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to

Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401

of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IV. Loitering By Taxicabs.

§ 50-371. Loitering of public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdemeanor and punished in the Superior Court of the District of Columbia by a fine of not less than \$10 nor more than \$40 for such offense. The Council of the District of Columbia is hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and the Mayor of the District of Columbia is hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section.

It shall be unlawful for any keeper or proprietor or agent acting for the keeper or proprietor of any licensed hotel in the District of Columbia to exclude any District licensed taxicab driver from picking up passengers at any hackstand or other location where taxicabs are regularly allowed to pick up passengers on the hotel premises.

Violation of this provision shall be punishable by a fine not more than the amount set forth in § 22-3571.01, or imprisonment for not more than 90 days, or both, for each violation hereof.

(July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Mar. 31, 1982, D.C. Law 4-89, § 3, 29 DCR 661; June 11, 2013, D.C. Law 19-317, § 262, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not to exceed \$300” in the third paragraph.

Legislative history of Law 19-317. — See note to § 50-351.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 4. UNIFORM CLASSIFICATION AND COMMERCIAL
DRIVER'S LICENSE.

Sec.
50-405. Penalties.

§ 50-405. Penalties.

(a) If the Mayor has reason to believe that a person has violated any of the requirements in § 50-403 or § 50-404, the alleged violation shall be enforced in accordance with Chapter 23 of this title, and rules issued by the Mayor pursuant to § 50-409. Any person who is determined by the Mayor, after notice and opportunity to be heard, to have violated § 50-403 or § 50-404, shall be liable to the District for a civil fine of not less than \$100 nor more than \$1000 for the first violation, of not less than \$500 nor more than \$2000 for the second violation, or of not less than \$1000 nor more than \$5000 for the third or a subsequent violation.

(b)(1) As an alternative sanction, any person who knowingly or willfully violates § 50-403 or § 50-404 shall be guilty of an offense and, upon conviction, may be:

(A) Fined not less than \$100 and not more than the amount set forth in § 22-3571.01, imprisoned for not more than 6 months, or both, for the first violation;

(B) Fined not less than \$500 and not more than the amount set forth in § 22-3571.01, imprisoned not less than 6 months nor more than 9 months, or both, for the second violation; or

(C) Fined not less than \$1000 and not more than the amount set forth in § 22-3571.01, imprisoned for not less than 9 months nor more than 1 year, or both, for the third or a subsequent violation.

(2) Prosecutions for violations of this subsection shall be brought by the Corporation Counsel.

(Sept. 20, 1990, D.C. Law 8-161, § 6, 37 DCR 4665; June 11, 2013, D.C. Law 19-317, § 263, 60 DCR 2064.)

Section references. — This section is referenced in § 16-801.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “and not more than the amount set forth in § 22-3571.01” for “nor more than \$1000” in (b)(1)(A), for “nor more than \$2000” in (b)(1)(B), and for “nor more than \$5000” in (b)(1)(C).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in

Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after

SUBTITLE II. CONSUMER PROTECTION.

CHAPTER 6. INSTALLMENT SALES OF MOTOR VEHICLES.

Sec.
50-607. Penalties.

§ 50-607. Penalties.

Any person who shall violate any provision of this chapter or of any regulation promulgated by the Council of the District of Columbia under the authority of this chapter, shall be guilty of a misdemeanor and shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 6 months, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(Apr. 22, 1960, 74 Stat. 73, Pub. L. 86-431, § 8; Oct. 5, 1985, D.C. Law 6-42, § 435, 32 DCR 4450; June 11, 2013, D.C. Law 19-317, § 264, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not exceeding \$500”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE IV. MOTORIZED VEHICLE REGISTRATION, INSPECTION, LICENSING.

CHAPTER 9A. DEPARTMENT OF TRANSPORTATION.

Subchapter IV. DC Streetcar Service

Sec.

50-921.71. Definitions.

50-921.72. DC Streetcar.

50-921.73. DC Streetcar Fund establishment.

50-921.74. Fares; structure; purpose.

50-921.75. Labor negotiations with streetcar operators and technicians.

Sec.

50-921.76. Rulemaking; enforcement; and adjudication.

50-921.77. Coordination with the Washington Metropolitan Area Transit Authority.

Subchapter I. General.

§ 50-921.04. Duties.

Section references. — This section is referenced in § 5-401.01, § 50-921.06, and § 50-921.16.

Editor's notes.

Section 8 of D.C. Law 19-289 rewrote (4)(G)(iii) to read as follows: “The requirements of §§ 1-303.21 and 1-303.23, and rules issued pursuant to those sections, pertaining to out-

door signs and other forms of exterior advertising in the District of Columbia, shall not apply; and”.

Section 9 of D.C. Law 19-289 provided: “Any order, rule, or regulation in effect under a law replaced by this act shall remain in effect until repealed, amended, or superseded.”

Applicability of D.C. Law 19-289, § 8: Sec-

§ 50-921.71 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

tion 10 of D.C. Law 19-289 provided that sections 3, 4, 5, 6, 7, and 8 of the act shall not apply until the Mayor's issuance of a comprehensive final rulemaking governing signs on public

space and private property pursuant to section 2 of the act. Section 2 of D.C. Law 19-289 rewrote §§ 1-303.21 and 1-303.23, and repealed § 1-303.22.

Subchapter IV. DC Streetcar Service.

§ 50-921.71. Definitions.

For the purposes of this subchapter, the term:

(1) "DC Streetcar" means a local fixed guideway transit network offering rail passenger service operated by the District government or its agent.

(2) "DC Streetcar Fund" or "Fund" means the fund established by § 50-921.73.

(3) "Ticket" includes a pass, token, or any other form of payment, including payments sold in bulk for resale, which may be used in lieu of cash.

(May 21, 2002, D.C. Law 14-137, § 11m, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Section references. — This section is referenced in § 2-1831.03.

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — Law 19-268, the "District Department of Transportation DC Streetcar Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-795. The Bill was adopted on first and second readings on Nov. 15, 2012 and Dec. 4, 2012, respectively. Signed by the Mayor on Jan. 18, 2013, it was assigned Act No. 19-629 and transmitted to Congress for its review. D.C. Law 19-268 became effective on April 20, 2013.

Editor's notes. — D.C. Law 19-268, § 3, added Title V, consisting of §§ 11m to 11s, to D.C. Law 14-137.

Section 4 of D.C. Law 19-268 provided: "Comprehensive financing and governance plan. On or before December 31, 2013, the Mayor's DC Streetcar Financing and Governance Task Force shall develop a comprehensive financing and governance plan for DC Streetcar, and shall transmit this plan to the Council."

Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.72. DC Streetcar.

The Department shall have the power to:

(1) Plan, develop, operate, control, and regulate the DC Streetcar, including establishing fares, charges, tickets, fines, and routes and schedules; and

(2) Sell space on and within DC Streetcar vehicles or other assets for the display of advertisements and enter into agreements with entities to sell space on vehicles or other assets in return for a fee, or as a gift or donation of services approved by the Mayor.

(May 21, 2002, D.C. Law 14-137, § 11n, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Section references. — This section is referenced in § 50-921.73.

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.73. DC Streetcar Fund establishment.

(a) There is established as a special fund the DC Streetcar Fund ("Fund"), which shall be administered by the Department in accordance with subsection (c) of this section.

(b) The Fund shall consist of revenue from the following sources:

(1) Revenue collected pursuant to §§ 50-921.72 and 50-921.74 by the District or its agents;

(2) Revenue collected from DC Streetcar financing districts to be established; and

(3) Monetary gifts and grants intended to be used to fund the DC Streetcar.

(c) The Fund shall be used to pay for goods, services, property, or for any other authorized purpose for the administration of the DC Streetcar.

(d) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (c) of this section without regard to fiscal year limitation, subject to authorization by Congress.

(May 21, 2002, D.C. Law 14-137, § 11o, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Section references. — This section is referenced in § 50-921.71.

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.74. Fares; structure; purpose.

(a) The Department shall set the rates and fares for the DC Streetcar.

(b) Nothing in subsection (a) of this section shall prevent the Department from offering tickets at no cost or at discounted prices as part of the Department's marketing of the DC Streetcar.

(c) The Department shall provide quality service at reasonable fares.

(May 21, 2002, D.C. Law 14-137, § 11p, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Section references. — This section is referenced in § 50-921.73.

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.75. Labor negotiations with streetcar operators and technicians.

If federal funds are used to operate the Streetcar program, the Department shall ensure that employee protective arrangements for employees of the DC Streetcar program comply with 49 U.S.C. § 5333(b).

(May 21, 2002, D.C. Law 14-137, § 11q, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.76. Rulemaking; enforcement; and adjudication.

(a) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], may issue rules to implement the provisions of this subchapter, including the manner and amount of a fare, fee, or fine.

(b) Civil fines, penalties, and fees may be imposed as sanctions for an infraction of a rule promulgated under subsection (a) of this section pursuant to Chapter 18 of Title 2 [§ 2-1801.01 et seq.].

(May 21, 2002, D.C. Law 14-137, § 11r, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

§ 50-921.77. Coordination with the Washington Metropolitan Area Transit Authority.

The Department shall coordinate DC Streetcar planning and operations with the Washington Metropolitan Area Transit Authority to ensure efficient, cost-effective, and coordinated transit service throughout the District of Columbia.

(May 21, 2002, D.C. Law 14-137, § 11s, as added Apr. 20, 2013, D.C. Law 19-268, § 3, 60 DCR 1709.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-268 added this section.

Legislative history of Law 19-268. — See note to § 50-921.71.

Editor's notes. — Section 5 of D.C. Law 19-268 provided that this subchapter shall expire as of September 30, 2015.

CHAPTER 11. INSPECTION.

Subchapter I. General

Sec.

50-1108. "Motor vehicle" defined.

Subchapter¹ I. General.

§ 50-1108. "Motor vehicle" defined.

As used in this subchapter, the term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by § 50-2201.02(12), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.

(Feb. 18, 1938, 52 Stat. 78, ch. 31, § 8, as added Mar. 15, 1985, D.C. Law 5-176, § 10, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 4, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 203, 53 DCR 10225; Apr. 27, 2013, D.C. Law 19-290, § 3, 60 DCR 2343.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-290 rewrote the section.

Legislative history of Law 19-290. — Law 19-290, the "Motorized Bicycle Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-995. The Bill was adopted on

first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

CHAPTER 12. LIENS ON MOTOR VEHICLES OR TRAILERS.

Sec.

50-1201. Definitions.

50-1202. Lien to appear on certificate of title; effect of other liens.

Sec.

50-1215. False statements as to liens; violations of law chapter.

§ 50-1201. Definitions.

For the purposes of this chapter, the term:

- (1) "Person" shall include one or more individuals, firms or unincorporated associations, or corporations.
- (2) "Director" shall mean the Director of the Department of Motor Vehicles, including assistants or agents duly designated by the Mayor of the District of Columbia.
- (3) "Recorder" shall mean an agent responsible for recording liens, appointed by the Director.
- (4) "Certificate" shall mean a certificate of title for a motor vehicle or trailer issued by the Director.

(5) "Owner" shall mean the person to whom such certificate is issued by the Director.

(6) "Lien" shall mean any right or interest in or to, any security interest as defined in § 28:1-201 of the District of Columbia Official Code in, or lien or encumbrance upon any motor vehicle or trailer, or the equipment or accessories affixed or sold to be affixed thereto, in favor of a person other than the owner, except:

(A) A sale of such motor vehicle or trailer accompanied by delivery of possession and on execution of the assignment on the back of the certificate covering it; or

(B) Any possessory lien now or hereafter provided by law or any lien acquired in any judicial proceeding.

(7) "Instrument" shall mean any security agreement, as defined in § 28:9-105(l) [see now § 28:9-102(a)(47)] of the District of Columbia Official Code, creating such lien.

(8) "Lien information" shall mean the amount, kind, date of lien, name and address of holder or secured party as defined in § 28:9-105(m) [see now § 28:9-102(a)(72)] of the District of Columbia Official Code, and Recorder's record number, if any.

(9) "Motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by § 50-2201.02(12), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.

(July 2, 1940, 54 Stat. 736, ch. 527, § 1; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(a); Mar. 15, 1985, D.C. Law 5-176, § 9, 32 DCR 748; Mar. 25, 2003, D.C. Law 14-235, § 5, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 204, 53 DCR 10225; Mar. 14, 2007, D.C. Law 16-279, § 201(a), 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, § 149, 56 DCR 1117; Apr. 27, 2013, D.C. Law 19-290, § 4, 60 DCR 2343.)

Section references. — This section is referenced in § 28:9-311.

Effect of amendments.

The 2013 amendment by D.C. Law 19-290 rewrote (9).

Legislative history of Law 19-290. — Law 19-290, the "Motorized Bicycle Amendment Act of 2012," was introduced in Council and as-

signed Bill No. 19-995. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

§ 50-1202. Lien to appear on certificate of title; effect of other liens.

During the time a certificate is outstanding for any motor vehicle or trailer, no lien against such motor vehicle or trailer or any equipment or accessories affixed or sold to be affixed thereto shall be valid except as between the parties and as to other persons having actual notice, unless and until entered on such certificate as hereinafter set forth; provided, that the foregoing shall not apply

to a lien or liens in existence on January 1, 1940, against a motor vehicle or trailer for which a certificate is outstanding on January 1, 1941, or any equipment or accessories affixed thereto. The filing provisions of Article 9 of Subtitle I of Title 28 of the District of Columbia Official Code do not apply to liens recorded as herein provided, and a lien has no greater validity or effect during the time a certificate is outstanding for the motor vehicle or trailer covered thereby by reason of the fact that the lien has been filed in accordance with that article. The perfection of a security interest of a motor vehicle or trailer under D.C. Official Code § 28:9-311(b) occurs upon receipt by the appropriate official in the Department of Motor Vehicles of a properly tendered application for a certificate of title on which the security interest is to be indicated.

(July 2, 1940, 54 Stat. 736, ch. 527, § 2; Dec. 30, 1963, 77 Stat. 771, Pub. L. 88-243, § 6(b); Apr. 27, 2013, D.C. Law 19-299, § 12, 60 DCR 2634.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-299 added the last sentence.

Legislative history of Law 19-299. — Law 19-299, the “Uniform Commercial Code Revision Act of 2012,” was introduced in Council

and assigned Bill No. 19-136. The Bill was adopted on first reading on Dec. 4, 2012. Signed by the Mayor on Feb. 8, 2013, it was assigned Act No. 19-667 and transmitted to Congress for its review. D.C. Law 19-299 became effective on Apr. 27, 2013.

§ 50-1215. False statements as to liens; violations of law chapter.

Any person intentionally making a false statement with respect to liens in an application for a certificate, or wilfully violating any of the provisions of this chapter, shall upon conviction be punished by a fine of not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 1 year, or both. Prosecutions for violations of this chapter shall be by the Corporation Counsel of the District of Columbia or any of his assistants, in the name of the District of Columbia.

(July 2, 1940, 54 Stat. 739, ch. 527, § 14; Mar. 14, 2007, D.C. Law 16-279, § 201(i), 54 DCR 903; June 11, 2013, D.C. Law 19-317, § 265, 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “of not more than \$5,000”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13. MOTOR VEHICLE OWNERS AND OPERATORS RESPONSIBILITY.

*Subchapter V. Proof of Financial
Responsibility*

*Subchapter VI. Violation of Provisions of
Chapter; Penalties*

Sec.

50-1301.37. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.

Sec.

50-1301.74. Failure to return license or registration; penalty.

50-1301.75. Penalty for violations of chapter.

Subchapter V. Proof of Financial Responsibility.

§ 50-1301.37. Suspension of license and registration for certain convictions; effect of proof of financial responsibility; vehicles owned or leased by the United States, a state, or a political subdivision thereof; suspension for foreign convictions.

(a) The license and registration of all vehicles registered in the name of any person who by a final order or judgment shall have been convicted of, or shall have forfeited any bond or collateral given to secure appearance for trial for a violation of any of the following provisions of law: (1) operating a motor vehicle while the person is intoxicated as defined by § 50-2206.01(9), or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor, or an individual under 21 years of age operating a motor vehicle when the individual's blood, breath, or urine contains any measurable amount of alcohol; (2) any homicide committed by means of a motor vehicle; (3) leaving the scene of an accident in which the motor vehicle driven by him was involved and in which there is personal injury, without giving assistance or making known his identity and address and the identity and address of the owner of said vehicle; (4) aggravated reckless driving; (5) any felony in the commission of which a motor vehicle is used; or (6) a conviction of, or forfeiture of bail or collateral for an offense in any state which, if committed in the District of Columbia, would be one of the offenses listed in clauses (1) through (5) of this subsection; shall be suspended by the Mayor and shall remain so suspended and shall not at any time thereafter be renewed, nor shall any other motor vehicle be thereafter registered in the name of such person as owner, except that: (1) if such owner has previously given or shall immediately give and thereafter maintain proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, the Mayor shall not suspend such registration unless otherwise required or permitted by law; or (2) if a conviction arose out of the operation, with permission, of a vehicle owned by or leased to the United States, the District of Columbia, a state, or a political subdivision of a state or a municipality thereof, the Mayor

shall not suspend the registration of any vehicle so owned or leased. If such person be not a resident of the District of Columbia, the privilege of operating any motor vehicle in the District of Columbia and the privilege of operation within the District of Columbia of any motor vehicle owned by him shall be suspended until he shall have furnished proof of financial responsibility for the future with respect to all such vehicles registered by such person as the owner, and such person shall not be allowed a license, nor shall such owner be allowed to register any vehicle in the District of Columbia, until he has complied with the requirements of this subchapter to the same extent that would be necessary if, at the time of the conviction or forfeiture, he had held a license or had been the owner of a vehicle registered in the District of Columbia.

(b) Upon receipt of a certification from any state that the operating privilege of a resident of the District of Columbia has been suspended or revoked pursuant to a law providing for such suspension or revocation for a conviction or forfeiture under circumstances which would require the Mayor to suspend a nonresident's operating privilege had the offense occurred in the District of Columbia, the Mayor shall suspend the license of such resident and the registration of all vehicles registered in his name.

(May 25, 1954, 68 Stat. 130, ch. 222, § 37; Aug. 28, 1958, 72 Stat. 955, Pub. L. 85-792, § 9; Sept. 8, 1960, 74 Stat. 862, Pub. L. 86-730, § 5; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(2), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, § 9, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 13, 29 DCR 5753; May 24, 1994, D.C. Law 10-122, § 5, 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 3, 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 7, 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 306, 59 DCR 12957; June 8, 2013, D.C. Law 19-316, § 4, 60 DCR 1713.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "person is intoxicated as defined by § 50-2206.01(9)" for "person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine" in (a).

The 2013 amendment by D.C. Law 19-316 substituted "aggravated reckless driving" for "reckless driving involving personal injury" in (a)(4).

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and

Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Legislative history of Law 19-316. — Law 19-316, the "Reckless Driving Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-823. The Bill was adopted on first and second readings on Nov. 1, 2012, and Nov 15, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-630 and transmitted to Congress for its review. D.C. Law 19-316 became effective on June 8, 2013.

Editor's notes. — Section 8 of D.C. Law 19-316 provided that the act shall apply as of June 1, 2013.

Subchapter VI. Violation of Provisions of Chapter; Penalties.

§ 50-1301.74. Failure to return license or registration; penalty.

Any person willfully failing to return a license or registration as required in § 50-1301.70, or when otherwise requested in writing by the Mayor shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not to exceed 30 days, or both.

(May 25, 1954, 68 Stat. 139, ch. 222, § 74; Mar. 14, 2007, D.C. Law 16-279, § 103(c), 54 DCR 903; June 11, 2013, D.C. Law 19-317, § 266(a), 60 DCR 2064.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-1301.75. Penalty for violations of chapter.

Any person who shall violate any provision of this chapter for which no penalty is otherwise provided shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(May 25, 1954, 68 Stat. 139, ch. 222, § 75; June 11, 2013, D.C. Law 19-317, § 266(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500”.

Legislative history of Law 19-317. — See note to § 50-1301.74.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 13A. SALVAGE, FLOOD NOTIFICATION AND NON-REPAIRABLE
VEHICLE CERTIFICATION.

Sec.

50-1331.08. Penalties.

§ 50-1331.08. Penalties.

(a) It shall be unlawful to:

(1) Make or cause to be made any false statement:

(A) On an application for a title or duplicate title; or

(B) In conjunction with any disclosure required under this chapter;

(2) Alter, forge, or counterfeit:

(A) A motor vehicle title or an assignment thereof;

(B) A Non-repairable Vehicle Certificate; or

(C) A certificate verifying a safety inspection;

(3) Falsify the results of, or provide false information in the course of, an inspection conducted in conjunction with obtaining a Rebuilt Salvage Title;

(4) Represent any Salvage Vehicle or Non-repairable Vehicle as a Rebuilt Salvage Vehicle;

(5) Fail to comply with any provision of this chapter requiring:

(A) Application for a title or certificate;

(B) Notification of specified parties; or

(C) Surrender of a title or certificate; or

(6) Conspire to commit any of the unlawful acts enumerated in this section.

(b) A person who commits an unlawful act as described in subsection (a) of this section shall upon conviction be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General for the District of Columbia or any of his assistants in the name of the District of Columbia.

(Apr. 8, 2005, D.C. Law 15-307, § 108, 52 DCR 1700; June 11, 2013, D.C. Law 19-317, § 267, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$2,000” in (b).

Legislative history of Law 19-317. — See note to § 50-1301.74.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 14. OPERATORS' PERMITS AND IDENTIFICATION CARDS.

Subchapter I. General

Sec.

50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.

50-1401.01b. Prohibition on release and use of certain personal information from motor vehicle records and accident reports.

Sec.

50-1401.02. Exemptions.

Subchapter II. Revocation and Suspension of Permit

50-1403.01. Revocation or suspension; new permit after revocation; nonresidents; penalty for operation with revoked or suspended license.

50-1403.03. Suspension of minor's motor vehicle operator's permit for alcohol violation.

Subchapter I. General.

§ 50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.

(a)(1) The Mayor is authorized to issue a new or renewed motor vehicle operator's permit, valid for a period not to exceed 8 years plus any time period prior to the expiration date of a previous license not to exceed 2 months, to any individual 17 years of age or older, subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$30, which may be increased by the Mayor to compensate the District for processing and evaluating the application and issuing the permit. Alternatively, the Mayor is authorized to prorate existing fees to correspond to the duration of the license issued.

(B) The applicant shall demonstrate that he or she is mentally, morally, and physically qualified to operate a motor vehicle in a manner not to jeopardize the safety of individuals or property. The Mayor shall determine whether an applicant is qualified through:

(i) An examination of the applicant's knowledge of the traffic regulations of the District;

(ii) A practical demonstration, or evidence acceptable to the Mayor of the applicant's ability to operate a motor vehicle within any portion of the District, except that upon renewal of an operator's permit or upon the application of an individual who meets the criteria set forth in subparagraph (C) of this paragraph, the examination and demonstration may be waived in the discretion of the Mayor; and

(iii) Any other criteria as the Mayor may establish.

(C) An applicant under the age of 21, shall meet the following additional qualifications in addition to the qualifications in subparagraph (B) of this paragraph:

(i) The applicant shall be the holder of a valid provisional permit issued at least 6 months prior to the application in accordance with paragraph (2A) of this subsection;

(ii) The applicant shall not have admitted to, been liable for, or convicted of an offense for which points may be assessed during the 12 consecutive month period immediately preceding the application; and

(iii) The applicant shall have received 10 hours of nighttime driving experience, as certified by the holder of a valid motor vehicle operator's permit from any jurisdiction, who is 21 years of age or older and has accompanied the applicant while the applicant was operating the motor vehicle.

(D) No permittee under the age of 18 shall:

(i) Operate a motor vehicle occupied by more than 2 passengers under the age of 21, except that this restriction shall not apply to a passenger who is a sibling of the permittee;

(ii) Operate a motor vehicle in which the permittee or any passenger fails to wear a seat belt; or

(iii) Operate a motor vehicle between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. on the following day during any month except July or August, and from 12:01 a.m. until 6:00 a.m. during July and August and on any Saturday or Sunday the rest of the year, unless driving to or from employment, a school-sponsored activity, religious or an athletic event or related training session in which the permittee is a participant, sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or unless accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older and who is occupying a seat beside the permittee; or

(iv) Operate a motor vehicle other than a passenger vehicle or motorized bicycle used solely for the purposes of pleasure and not for compensation.

(2) The Mayor is authorized to issue a new or renewed learner's permit valid for 1-year to any individual 16 years of age or older subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$15, which may be increased by the Mayor for the costs of processing and evaluating the application and issuing the permit.

(B) The applicant shall have successfully passed all parts of the examination other than the driving demonstration test; and

(C) No holder of a learner's permit shall:

(i) Operate a motor vehicle except for a passenger vehicle used solely for pleasure;

(ii) Operate a motor vehicle for compensation;

(iii) Operate a motor vehicle unless while under the instruction of and accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older, occupying a seat beside the permittee, and wearing a seat belt; and

(iv) Operate a motor vehicle except during the hours of 6 a.m. and 9 p.m.

(2A) The Mayor is authorized to issue a new or renewed provisional motor vehicle operator's permit, valid for a period not to exceed 1-year, to any individual 16 and ½ years of age or older subject to the following conditions and any other conditions the Mayor may prescribe to protect the public:

(A) The applicant shall pay an application fee of \$15, which may be increased by the Mayor for the costs of processing and evaluating the application and issuing the permit;

(B) The applicant shall satisfy the qualification requirements set forth in subsection (a)(1)(B) of this section and:

(i) Shall be the holder of a valid learner's permit issued at least 6 months prior to the application for a provisional permit;

(ii) Shall not have admitted to, been found liable for, or been convicted of an offense for which points may be assessed in the last 6 months; and

(iii) Shall have received 40 hours of driving experience as certified by the holder of a valid motor vehicle operator's permit from any jurisdiction, who is 21 years of age or older and who has accompanied the applicant while the applicant was operating the motor vehicle.

(C) No holder of a provisional permit shall:

(i) Operate a motor vehicle occupied by any passengers other than one holder of a valid motor vehicle operator's permit who is 21 years of age or older, occupying the seat beside the permittee, and wearing a seat belt, and any other passenger who is a sibling or parent of the permittee; or

(ii) Operate a motor vehicle between 11:00 p.m. on any Sunday, Monday, Tuesday, Wednesday or Thursday until 6:00 a.m. on the following day during any month except July or August, and from 12:01 a.m. until 6:00 a.m. during July and August and on any Saturday or Sunday the rest of the year, unless driving to or from employment, a school-sponsored activity, religious or an athletic event or related training session in which the permittee is a participant, sponsored by the District of Columbia, a civic organization, or another similar entity that takes responsibility for the minor, or unless accompanied by the holder of a valid motor vehicle operator's permit who is 21 years of age or older, wearing a seat belt, and occupying a seat beside the permittee.

(2B) Notwithstanding the provision of subsection (a)(1)(C), (a)(2)(B), and (a)(2A) of this section, a person under the age of 21 who holds a valid motor vehicle permit from another jurisdiction shall be eligible for a comparable District of Columbia driver's permit, provided that the permittee's operation of a motor vehicle shall be subject to the applicable restrictions set forth in subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C) of this section.

(2C) Penalties:

(A) Any violation of the permit restrictions set forth [in] subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C) of this section, in addition to any other penalties that may be imposed by law, shall result in the suspension of the permits issued pursuant to subsection (a)(1)(C), (a)(2), or (a)(2A) and the addition of a period of time equal to the period of permit suspension to the requirements set forth in (a)(1)(C)(i) and (a)(2A)(B)(i) as follows:

(i) The first offense shall result in a suspension of 30 days;

(ii) The second offense shall result in suspension of 60 days; and

(iii) The third and subsequent offenses shall result in a suspension of 90 days.

(B) The Mayor shall notify, in writing, the parent or legal guardian of a permittee who is under 18 years of age and who violates subsection (a)(1)(D), (a)(2)(C), or (a)(2A)(C);

(2D) Operator's permits subject to the provisions of this subchapter, including a learner's permit, provisional permit and operator's permit, shall be visually distinguishable pursuant to rules promulgated by the Department of Motor Vehicles.

(3) Any pupil 15 years of age or over enrolled in a high school or junior high school driver education and training course approved by the Mayor or his designated agent may, without obtaining either an operator's or a learner's

permit, operate a dual control motor vehicle between the hours of 6 a.m. and 11 p.m., where the pupil is under instruction and accompanied by a licensed motor vehicle driving instructor; provided, that such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.

(3A) Notwithstanding the passenger restrictions set forth in subsection (a)(1)(D), (a)(C)(iii), and (a)(2A)(C)(iii) of this subsection, a permittee who is enrolled in a driver education course may operate a motor vehicle containing a greater number of passengers while the permittee is under the instruction of and accompanied by a licensed motor vehicle driving instructor provided that the other passengers are also receiving driving instruction.

(4) In the event an operator's permit, learner's permit, or a provisional permit issued under the authority of this section is lost or destroyed, or requires replacement for any reason, other than through error or other act of the Mayor, not caused by the person to whom such permit was issued, such person may obtain a duplicate or replacement operator's permit upon payment of a fee of \$20, or such person may obtain a duplicate or replacement learner's permit, or replacement provisional permit upon payment of a fee of \$20.

(5) Enlisted men of the Army, Navy, Air Force, Marine Corps, and Coast Guard shall be issued, without charge, a permit to operate government-owned vehicles, while engaged in official business, upon the presentation of a certificate from their commanding officers to the effect that they are assigned to operate a government vehicle and are qualified to drive, and upon proving to the satisfaction of the Director of the Department of Transportation that they are familiar with the traffic regulations of the District of Columbia.

(5A)(A) Except as provided in subparagraph (C) of this paragraph, any eligible United States citizen or resident who is at least 18 years of age but no more than 26 years of age shall be registered with the Selective Service System, in compliance with the requirements of 50 U.S.C. App. § 453, when applying for an operator's permit or identification card pursuant to the laws of the District.

(B) The Director of the Department of Motor Vehicles ("Department") shall forward, in an electronic format, the personal information required of the applicant identified in subparagraph (A) of this paragraph to the Selective Service System for registration. The Department shall notify the applicant on the application for an operator's permit or an identification card that submitting the application serves as consent to register with the Selective Service System, in compliance with federal law.

(C) The Director of the Department of Motor Vehicles shall make available a form, separate from the application, which shall indicate that the applicant has chosen not to use the operator's permit or identification card application as a means of registering with the Selective Service System ("waiver form"). The waiver form shall state the effects of failure to register and the programs that condition eligibility upon registration with the Selective

Service System. Applicants shall be informed that the waiver form is available upon request. The waiver form shall also state the civil and criminal penalties for failure to register for Selective Service. Failure to submit the waiver form is form shall be deemed affirmative proof that the applicant authorizes the Director of the Department to forward to the Selective Service System the information necessary to complete registration on behalf of the applicant. The waiver form, after completion, shall be added to the applicants file.

(D) This form shall comply with the requirements of subchapter II of Chapter 31 of Title 2 [§ 2-1931 et seq.] including being printed in each required language under § 2-1933.

(E) An applicant's submission of the waiver form specified in subparagraph (C) of this paragraph shall not be treated as grounds for denial of an application for an operator's permit or an identification card.

(F) The Director of the Department shall not forward to the Selective Service System the personal information of an individual who completes and submits the waiver form described in subparagraph (C) of this paragraph.

(6) Notwithstanding the provisions of this subsection, the Mayor or his designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of 6 years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the armed forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.

(a-1)(1) The Mayor and the Board of Elections and Ethics shall jointly develop an application form and a change of name and address form by January 1, 1989, which shall allow an applicant wishing to register to vote to do so by the use of a single form containing the necessary information for voter registration and the information required for the issuance, renewal, or correction of the applicant's driver's permit or identification card.

(2) Commencing not later than May 1, 1989, the Mayor shall provide each qualified elector who applies for the issuance, renewal, or correction of any type of driver's permit or for an identification card an opportunity to complete an application to register to vote by use of a single form containing the necessary required information for the issuance, renewal, or correction of the driver's permit or identification card.

(3) The Mayor shall forward all new applications to the Board of Elections and Ethics within 10 days of receipt.

(4) Applications received from the Mayor shall be considered received by the Board of Elections and Ethics as of the date the application was made.

(b)(1) Each operator's permit shall state the name and address, and bear the signature of the permittee, together with any additional information that the Mayor may by regulation prescribe. Pursuant to section 205(c)(2)(C)(vi) of the Social Security Act, approved August 14, 1935 (49 Stat. 624, 42 U.S.C. § 405(c)(2)(C)(vi)), the Mayor shall use a randomly generated number as the identification number on any new or renewed license.

(2) The Mayor shall require an applicant for an operator's permit to provide a social security number, if such a number was issued to the applicant,

or, if required by the Mayor, proof that the applicant is not eligible for a social security number, for the purposes of administering and enforcing the laws of the District of Columbia. Notwithstanding any other provision of law, the social security number or other tax identification number shall not be a matter of public record. The social security number shall be kept on file with the issuing agency and the applicant shall be so advised.

(c) Any individual to whom a license or permit to operate a motor vehicle has been issued shall have the license or permit in his or her immediate possession at all times while operating a motor vehicle in the District of Columbia and shall exhibit the license or permit to any police officer upon demand. Any person who fails to comply with the requirements of this subsection shall, upon conviction, be fined not less than \$10 nor more than \$50.

(d) No individual shall operate a motor vehicle in the District, except as provided in § 50-1401.02, without first having obtained an operator's permit, learner's permit, provisional permit, or a motorcycle endorsement if operating a motorcycle, issued under the provisions of this subchapter and Title 18 of the District of Columbia Municipal Regulations. Except as provided in subsection (d-1) of this section, any individual violating any provision of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or shall be imprisoned not more than 90 days.

(d-1) Any individual who operates a motor vehicle with a District of Columbia permit expired for not more than 90 days shall be subject to a civil fine of not more than \$100 pursuant to §§ 50-2301.04(b) and 50-2301.05, and shall not be subject to the criminal penalties contained in subsection (d) of this section.

(e) Nothing in this subchapter shall relieve any individual from compliance with § 47-2829(e).

(f) For purposes of this section and §§ 50-1401.02 and 50-1403.01, the term "motor vehicle" means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by § 50-2201.02(12), a battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.

(g) [Expired].

(Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 7; July 3, 1926, 44 Stat. 812, ch. 739, § 2; Feb. 18, 1929, 45 Stat. 1226, ch. 258; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; June 20, 1939, 53 Stat. 850, ch. 231; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 2; Dec. 15, 1944, 58 Stat. 806, ch. 589, § 1; Apr. 20, 1948, 62 Stat. 173, ch. 215, §§ 1, 2; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 1, 2, 3, 4, 5; July 24, 1956, 70 Stat. 633, ch. 695, § 2; Oct. 3, 1962, 76 Stat. 710, Pub. L. 87-737, § 1; Mar. 18, 1964, 78 Stat. 167, Pub. L. 88-287, § 1; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 405; Apr. 7, 1977, D.C. Law 1-110, § 4, 23 DCR 8740; Apr. 26, 1977, D.C. Law 1-133, title II, § 201(b), 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 2, 28 DCR 3383; Apr. 3, 1982, D.C. Law 4-97, § 6, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 12(b), 32 DCR 748; Sept.

27, 1985, D.C. Law 6-38, § 3, 32 DCR 4307; Feb. 28, 1987, D.C. Law 6-194, § 3, 34 DCR 479; Sept. 29, 1988, D.C. Law 7-155, § 2, 35 DCR 5718; Aug. 17, 1991, D.C. Law 9-30, § 4(b), 38 DCR 4215; Sept. 20, 1995, D.C. Law 11-48, § 5, 42 DCR 3627; May 24, 1996, D.C. Law 11-124, § 2, 43 DCR 1546; Apr. 5, 2000, D.C. Law 13-73, § 2, 46 DCR 10417; Apr. 5, 2000, D.C. Law 13-74, § 2, 46 DCR 10423; Apr. 12, 2000, D.C. Law 13-91, § 150, 47 DCR 520; Apr. 27, 2001, D.C. Law 13-289, § 401(b), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 10(d), 49 DCR 9788; Apr. 5, 2005, D.C. Law 15-289, § 2(b), 52 DCR 1446; Apr. 8, 2005, D.C. Law 15-307, § 205(a), 52 DCR 1700; Mar. 6, 2007, D.C. Law 16-224, § 101(c), 53 DCR 10225; Mar. 14, 2007, D.C. Law 16-279, §§ 202(c), 401(b), 54 DCR 903; Aug. 16, 2008, D.C. Law 17-219, § 6011, 55 DCR 7598; Sept. 14, 2011, D.C. Law 19-21, § 6002, 58 DCR 6226; Oct. 23, 2012, D.C. Law 19-189, § 2, 59 DCR 10156; Apr. 27, 2013, D.C. Law 19-290, § 5(b), 60 DCR 2343; June 11, 2013, D.C. Law 19-317, § 268(a), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801, § 50-1401.02, § 50-1403.02, and § 50-2302.02.

Effect of amendments.

The 2012 amendment by D.C. Law 19-189 rewrote (a)(5A).

The 2013 amendment by D.C. Law 19-290 rewrote (f).

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$300” in (d).

Legislative history of Law 19-189. — Law 19-189, the “Access to Selective Service Registration Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-330. The Bill was adopted on first and second readings on June 5, 2012, and July 10, 2012, respectively. Signed by the Mayor on August 9, 2012, it was assigned Act No. 19-443 and transmitted to Congress for its review. D.C. Law 19-189 became effective on Oct. 23, 2012.

Legislative history of Law 19-290. — Law 19-290, the “Motorized Bicycle Amendment Act

of 2012,” was introduced in Council and assigned Bill No. 19-995. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-1401.01b. Prohibition on release and use of certain personal information from motor vehicle records and accident reports.

(a) For the purposes of this section, the term:

(1) “Accident report” means any record prepared as a result of a vehicular accident, also known as the Metropolitan Police Department Form PD-10.

(2) “Motor vehicle record” means any record that pertains to a motor vehicle operator’s application, permit, motor vehicle title, motor vehicle registration, or identification card issued by the Department of Motor Vehicles.

(3)(A) “Personal information” shall include an individual’s photograph or image, social security number, driver identification number or identification card number, name, address, telephone number, medical or disability information, and emergency contact information.

(B) The term “personal information” shall not include information relating to vehicular crashes, driving violations, or driver status.

(b) Except as provided in subsections (c), (d) and (e) of this section, the Department of Motor Vehicles (“Department”), the Metropolitan Police Department, and any officer, employee, or contractor affiliated with either department, or any other person or entity shall not knowingly disclose or otherwise make available personal information about an individual obtained by the Department or the Metropolitan Police Department in connection with a motor vehicle record or an accident report.

(c) Personal information contained in motor vehicle records or accident reports prohibited from disclosure by subsection (b) of this section may be released to a person upon the showing of sufficient written proof for the following uses:

(1) To carry out the purposes of Titles I and IV of the Anti Car Theft Act of 1992, approved October 25, 1992 (106 Stat. 3384; 49 U.S.C. § 30501 et seq. 49 U.S.C. § 33101 et seq.); the Automobile Information Disclosure Act, approved July 7, 1958 (72 Stat. 325; 15 U.S.C. § 1231 et seq.), the Clean Air Act, approved December 17, 1963 (77 Stat. 392; 42 U.S.C. § 7401 et seq.), and chapters 301, 305, and 321-331 of Title 49 of the United States Code (49 U.S.C. § 30101 et seq., 49 U.S.C. § 30501 et seq., 49 U.S.C. § 32101 et seq. through 49 U.S.C. § 33101 et seq.), in connection with matters of:

(A) Motor vehicles or driver safety and theft;

(B) Motor vehicle emissions;

(C) Motor vehicle product alterations, recalls, or advisories;

(D) Performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and

(E) Removal of non-owner records from the original owner records of motor vehicle manufacturers;

(2) By any government agency, including any court or law enforcement agency, in carrying out its core functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its core functions;

(3) In the normal course of business by a legitimate business or its agents, employees, or contractors, but only to verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors;

(4) For use in connection with an actual or contemplated civil, criminal, administrative, or arbitral proceeding in a court or agency, or before a self-regulatory body for any of the following, except that the use shall not include the solicitation of clients, prohibited by § 22-3225.14:

(A) For use by a person involved in the accident and listed on the accident report;

(B) Service of process by a certified process server, special process server, or other person authorized to serve process in the District;

(C) For an accident report, an investigation in anticipation of litigation by an attorney representing a person or entity involved in the motor vehicle accident and licensed to practice law in the District or any other United States jurisdiction, or the agent of the attorney;

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(D) For a motor vehicle record, an investigation in anticipation of litigation by an attorney licensed to practice law in the District or any other United States jurisdiction, or the agent of the attorney;

(E) Execution or enforcement of judgments and orders; and

(F) Compliance with a court order;

(5) In research activities and for use in producing statistical reports; so long as the personal information is not published, re-disclosed, or used to contact individuals;

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims of investigation activities, anti-fraud activities, rating, or underwriting;

(7) In providing notice to the owners of towed or impounded vehicles;

(8) For use by a licensed private investigative agency or licensed security service for a purpose permitted under this subsection; provided, that the use shall not include the solicitation of clients, prohibited by § 22-3225.14. Personal information obtained based on an exempt driver's record may not be provided to a client who cannot demonstrate a need based on a permitted use under this subsection;

(9) By an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license required under 49 U.S.C. § 31301 et seq.;

(10) For bulk distribution for surveys, marketing, or solicitations when the department has obtained the express consent of the person to whom such personal information pertains;

(11) By an organ or tissue donor organization; provided, that the person to whom such information applies has consented in a writing submitted to the Department to be an organ or tissue donor;

(12) For any use if the requesting person demonstrates that he or she has obtained the written consent of the person who is the subject of the motor vehicle record or accident report. The consent shall remain in effect until it is revoked by the person who is the subject of the motor vehicle record or accident report; and

(13) For use in connection with the operation of private toll transportation facilities.

(d) Notwithstanding subsection (c) of this section, without the express consent of the person to whom such information applies, the following information contained in motor vehicle records or accident reports may be released only as specified in this subsection:

(1) Social security numbers may be released only as provided in subsections (c)(2) or (c)(9) of this section;

(2) An individual's photograph or image may be released only as provided in subsection (c)(2) of this section;

(3) Medical disability information may be released only as provided in subsections (c)(2) or (c)(9) of this section; and

(4) Emergency contact information may be released only to law enforcement agencies for the purposes of contacting individuals listed in the event of an emergency.

(e) (1) Personal information prohibited from disclosure by subsection (b) of this section may be disclosed by the Department to a firm, corporation, or similar business entity whose primary business interest is to resell or re-disclose the personal information to persons who are authorized to receive such information. Before the Department's disclosure of personal information, such firm, corporation, or similar business entity must first enter into a contract with the Department regarding the care, custody, and control of the personal information to ensure compliance with the Driver's Privacy Protection Act of 1994, approved September 13, 1994 (108 Stat. 2099; 18 U.S.C. § 2721 et seq.), and applicable District laws.

(2) An authorized recipient of personal information contained in a motor vehicle record, except a recipient under subsection (c)(10) of this section, may contract with the Department to resell or re-disclose the information for any use permitted under this section. Authorized recipients of personal information under subsection (c)(10) of this section may resell or re-disclose personal information only in accordance with subsection (c)(10) of this section.

(3) An authorized recipient who resells or re-discloses personal information shall maintain, for a period of 5 years, records identifying each person or entity that receives the personal information and the permitted purpose for which it will be used. The records shall be made available for inspection upon request by the Department.

(4) The Department and the Metropolitan Police Department may require documentation to support a request for personal information, and either department shall have the sole discretion to determine whether the documentation provided is sufficient to support the request.

(f) The Department and the Metropolitan Police Department may adopt rules to carry out the purposes of this section. Rules adopted by either department may provide for the payment of applicable fees. In addition, the rules may require an individual requesting the disclosure of personal information pursuant to this subsection to provide proof of identity and, to the extent required, provide assurance that the use will be only as authorized or that the consent of the person who is the subject of the personal information has been obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements required by either department.

(g) Failure to comply with the restrictions set forth in this section may subject the violator to penalties and civil action as set forth in the Driver's Privacy Protection Act of 1994, approved September 13, 1994 (108 Stat. 2099; 18 U.S.C. §§ 2721, 2723, 2724).

(Mar. 3, 1925, 43 Stat. 1121, ch. 433, § 7b, as added Mar. 5, 2013, D.C. Law 19-207, § 3, 59 DCR 12507; June 19, 2013, D.C. Law 19-320, § 512, 60 DCR 3390.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-320 substituted "name, address" for "name address" in (a)(3)(A); in (b), substituted "obtained by the Department" for "obtained by the Department

of Motor Vehicles" and substituted "motor vehicle" for "motor-vehicle"; rewrote (c)(4)(A), which read; "A person listed on the accident report"; added the second occurrence of "or accident report" in (c)(12); substituted "prohibited from

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disclosure by subsection (b) of this section” for “made confidential and prohibited from disclosure” near the beginning of (e)(1); in the second sentence of (e)(2), deleted “However only” from the beginning and substituted “only in accordance with” for “pursuant to”; and deleted “of Motor Vehicles” following “the Department” in (e)(2), (e)(4), and (f).

Legislative history of Law 19-320. — Law

19-320, the “Omnibus Criminal Code Amendments Act of 2012,” was introduced in Council and assigned Bill No. 19-645. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Feb. 11, 2013, it was assigned Act No. 19-677 and transmitted to Congress for its review. D.C. Law 19-320 became effective on June 19, 2013.

§ 50-1401.02. Exemptions.

(a) The owner or operator of any motor vehicle who is not a legal resident of the District of Columbia, and who has complied with the laws of any state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, shall, subject to the provisions of this section, be exempt for a continuous 30 day period immediately following the entrance of such owner or operator into the District of Columbia from compliance with § 50-1401.01 and § 50-1501.02. The 30-day exemption period shall not apply to commercial motor vehicles required to obtain a permit, as provided by § 50-1507.03 or charter busses identified in § 50-1501.02(j).

(b) Upon expiration of the 30 day exemption period, the owner or operator of any motor vehicle shall be required either:

(1) To comply with the provisions of §§ 50-1401.01 and 50-1501.02 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; or

(2) To purchase, from the Mayor or his designated agent, a reciprocity sticker which shall be valid 180 days from the date of its issuance if the owner or operator has complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, of which the owner or operator is a legal resident and the owner or operator is not a legal resident of the District of Columbia. Upon expiration of the reciprocity sticker, the owner or operator who continues to reside in the District of Columbia shall be required to comply with §§ 50-1401.01 and 50-1501.02 and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(c) The following persons shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective term of office or employment from compliance with §§ 50-1401.01 and 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia:

(1) Senators, Representatives, and Delegates of the United States Congress;

(2) Personal employees of Senators, Representatives, and Delegates of the United States Congress who are legal residents of the state, territory, or possession from which said Senators, Representatives, and Delegates have been elected or appointed. Personal employees include only those individuals who work directly and specifically for a Senator, Representative, or Delegate of the United States Congress and does not include those staff members considered committee or patronage staff;

(3) The President and Vice-President of the United States;

(4) Officers of the executive branch of the United States government who are not domiciled within the District of Columbia, whose appointment to the office held by them was by the President of the United States, subject to confirmation by the Senate, and whose tenure of office is at the pleasure of the President;

(5) Any nonresident service member in accordance with section 511 of the Soldiers' and Sailors' Civil Relief Act of 1940, approved December 19, 2003 (117 Stat. 2835; 50 U.S.C. § 571);

(6) Any foreign mission, its members, or dependents of its members, but only if they have been issued a title and registration by the United States Department of State; and

(7) Any minor under 21 years of age or spouse of any person identified in paragraphs (1) through (6); provided, that the person identified in paragraphs (1) through (6) signs an affidavit stating the minor or spouse resides at the same address in the District as the affiant.

(d) Those persons listed under subsection (c) of this section shall be required to obtain and display a valid reciprocity sticker. The Mayor shall issue, upon application and a fee of \$50, a reciprocity sticker for those persons listed under subsection (c) of this section, valid for 1 year, and renewable for the respective term of office or employment.

(e) Persons enrolled as full-time students engaged in higher education (as defined by the respective institutions of higher education in the District of Columbia) in an institution of higher education licensed to operate in the District of Columbia, and who are not residents of the District of Columbia, shall, if they have complied with the motor vehicle registration and licensing laws of the state, territory, or possession of the United States of which they are a legal resident, be exempt during their respective tenure as full-time students engaged in higher education from compliance with §§ 50-1401.01 and 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia; provided, that the full-time student shall be required to obtain and display a valid reciprocity sticker.

(1) A full-time student shall be required to submit proof, as required by the Mayor, that the student is a full-time student and is in compliance with this subsection.

(2) The Mayor shall issue, upon application and for a \$338 fee, a reciprocity sticker to full-time students who comply with this section. Such sticker shall be valid for 1 year. A full-time student while enrolled in an

institution of higher education in the District of Columbia and while in compliance with this subsection shall be able to obtain successive reciprocity stickers, each valid for 1 year and each for a fee of \$338.

(3) A full-time student who is a resident of the District of Columbia, who is registered to vote in the District of Columbia, who is employed for more than 20 hours a week, whose address for the purpose of paying tuition for higher education is in the District of Columbia, whose parent or parents domicile in the District of Columbia or whose parents are divorced or separated and the custodial parent domiciles in the District of Columbia, whose student loan is from a bank or savings and loan in the District of Columbia, or who fulfills any criteria promulgated by the Mayor of the District of Columbia shall be required to comply with § 50-1401.01 and § 50-1501.02, and all applicable provisions of the District of Columbia Municipal Regulations requiring the registration of motor vehicles, the display of identification tags, and the licensing of owners or operators of motor vehicles in the District of Columbia.

(4) Notwithstanding any other law, full-time students who reside within the boundaries of Advisory Neighborhood Commissions 2A and 2E shall not be issued or use a reciprocity parking sticker for out of state vehicles. As of January 1, 2003, this provision shall also apply to full-time students who reside within the boundaries of ANC 3D06 and 3D09.

(e-1)(1) An owner or operator of a motor vehicle shall be exempt from compliance with § 50-1401.01, § 50-1501.02, and sections 414.1, 422.1, and 422.7 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 414.1, 422.1, 422.7); provided, that the owner or operator:

(A) Is a legal resident of a state, territory, possession of the United States, foreign country, or political subdivision other than the District of Columbia;

(B) Owns residential property in the District of Columbia;

(C) Lives at the residential property described in subparagraph (B) of this paragraph on a part-time basis;

(D) Has a motor vehicle registered and licensed in a state, territory, possession of the United States, foreign country, or political subdivision other than the District of Columbia; and

(E) Has complied with the motor vehicle registration and licensing laws of a state, territory, or possession of the United States, or of a foreign country or political subdivision thereof, of which the owner or operator is a legal resident.

(2) An individual who meets the qualifications set forth in paragraph (1) of this subsection shall be required to submit proof, as required by the Mayor, that the individual owns residential property in the District and is a part-time resident.

(3) An individual who meets the qualifications set forth in paragraphs (1) and (2) of this subsection may obtain and display a valid reciprocity sticker. The Mayor shall issue, upon application and for a \$338 fee, a reciprocity sticker to the motor vehicle owner or operator who complies with this subsection, which shall be valid for one year. A motor vehicle owner or operator while in compliance with this subsection shall be able to obtain successive reciprocity stickers, each valid for one year, and each for a fee of \$338.

(e-2)(1) A motor vehicle owner that is a partnership, corporation, association, trust, limited liability company, or government entity and has legally complied with the motor vehicle registration and licensing laws of a state, territory, or possession of the United States, shall be exempt from compliance with § 50-1501.02, and sections 414.1, 422.1, 422.7, and 422.10 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 414.1, 422.1, 422.7, 422.10); provided, that:

(A) The vehicle is housed in the District of Columbia;

(B) The vehicle is provided to an employee of the owner or lessee for the employee's use;

(C) The employee is domiciled in the District of Columbia;

(D) The employee is licensed by the District of Columbia to operate a motor vehicle; and

(E) The business or government entity purchases a reciprocity sticker for the vehicle provided to its employee.

(2) The Mayor shall issue, upon application and for a \$338 fee, a reciprocity sticker to the motor vehicle owner or operator who complies with this subsection, which shall be valid for one year. While in compliance with this subsection, the motor vehicle owner or operator shall be able to obtain successive reciprocity stickers, each valid for one year, and each for a fee of \$338. There shall be no fee for vehicles owned by the District or the United States government.

(f) Repealed.

(g) The Mayor or his designated agent is authorized to enter into reciprocal agreements or arrangements with the duly authorized representatives of a state, territory, or possession of the United States or a foreign country or political subdivision thereof, to vary the conditions under which the validity of motor vehicle registration and identification tags of any category of vehicles such as dealer tags, tags for persons with disabilities, and rental vehicle tags of such state, territory, or possession of the United States or foreign country or political subdivision thereof, shall be recognized in the District of Columbia.

(h) The Mayor of the District of Columbia shall promulgate such rules and regulations as are necessary to implement and enforce this section. Such rules and regulations shall include, but not be limited to, a determination of how many times during the 30-day exemption period an agent or employee of the Mayor of the District of Columbia must observe a motor vehicle for purposes of the enforcement of this section and a method of enforcing the provisions of this section applicable to commercial vehicles.

(i) Any operator of a motor vehicle who is not a legal resident of the District of Columbia and who does not have in his immediate possession an operator's permit issued by a state, territory, or possession of the United States, or foreign country or political subdivision thereof, having motor vehicle reciprocity relations with the District, shall not operate a motor vehicle in the District unless: (1) the laws of the state, territory, or possession of the United States, or foreign country or political subdivision thereof, under which the motor vehicle is registered do not require the issuance of a motor vehicle operator's permit; or (2) has submitted to examination within 72 hours after entering the District

and obtained an operator's permit in accordance with the provisions of § 50-1401.01. Any individual who violates any provision of this subsection shall, upon conviction thereof, be fined not less than \$5 and not more than the amount set forth in § 22-3571.01 or imprisoned not less than 30 days, or both.

(Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 8; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 2; Aug. 16, 1954, 68 Stat. 733, ch. 741, § 6; Apr. 6, 1978, D.C. Law 2-69, § 5, 24 DCR 6800; Mar. 16, 1982, D.C. Law 4-80, § 2, 29 DCR 149; July 1, 1982, D.C. Law 4-122, § 2, 29 DCR 2080; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Aug. 2, 1983, D.C. Law 5-24, § 9, 30 DCR 3341; Apr. 9, 1997, D.C. Law 11-198, § 506, 43 DCR 4569; Sept. 5, 1997, D.C. Law 12-14, § 8, 44 DCR 3620; June 28, 2002, D.C. Law 14-167, § 3, 49 DCR 4475; June 5, 2003, D.C. Law 14-307, § 1706(b), 49 DCR 11664; Mar. 14, 2007, D.C. Law 16-279, §§ 202(d), 401(c), 54 DCR 903; Sept. 14, 2011, D.C. Law 19-21, § 6062, 58 DCR 6226; Mar. 19, 2013, D.C. Law 19-244, § 2, 59 DCR 14942; Sept. 26, 2012, D.C. Law 19-169, § 34, 59 DCR 5567; June 11, 2013, D.C. Law 19-317, § 268(b), 60 DCR 2064.)

Section references. — This section is referenced in § 50-1401.01, § 50-1403.01, § 50-1403.02, § 50-1501.02, and § 50-1501.04.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted "and not more than the amount set forth in § 22-3571.01" for "nor more than \$50" in (i).

Legislative history of Law 19-317. — See note to § 50-1401.01.

Editor's notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter II. Revocation and Suspension of Permit.

§ 50-1403.01. Revocation or suspension; new permit after revocation; nonresidents; penalty for operation with revoked or suspended license.

(a) Except where for any violation of this subchapter revocation of the operator's permit is mandatory or where suspension or revocation is mandatory for accumulated point totals pursuant to Chapter 3 of Title 18 of the District of Columbia Municipal Regulations, the Mayor or his designated agent may revoke or suspend an operator's permit for any cause which he or his agent may deem sufficient; provided, that in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension; provided further, that such order shall take effect 10 (15, if the person is a nonresident) days after its issuance unless the holder of the permit shall have filed within such period, written application with the Mayor of the District of Columbia for a review of his order or the order of his agent, and, if upon such review, the Mayor shall sustain such order, the same shall become effective immediately; provided further, that application to said Mayor for a review shall not operate as a stay of such order of the Mayor or his agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving while the person is intoxicated as defined by § 50-2206.01(9), or while under the influence of

intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

(b) In case the operator's permit of any individual is revoked no new permit shall be issued to such individual for at least 6 months after the revocation except in the discretion of the Mayor or his designated agent.

(c) The Mayor of the District of Columbia, or his designated agent, may suspend or revoke the right of any nonresident person as defined in § 50-1401.02, to operate a motor vehicle in the District of Columbia, for any cause he or his agent may deem sufficient, and the proper authority at the place of issuance of the permit, or other authority to operate a motor vehicle shall be notified of such suspension and the reason therefor, immediately; provided, that such order of suspension or revocation shall take effect 10 days after its issuance, and the same be subject to review and appeal in the manner and under the same conditions as are provided for such matters in subsection (a) of this section.

(d) Notwithstanding any other provision of this section, the provisions of the District of Columbia Administrative Procedure Act (§ 2-501 et seq.) and particularly those of § 2-509, shall apply to each proceeding, decision, or other administrative action specified in this subchapter.

(e) Any individual found guilty of operating a motor vehicle in the District during the period for which the individual's license is revoked or suspended, or for which his right to operate is suspended or revoked, shall, for each such offense, be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(Mar. 3, 1925, 43 Stat. 1125, ch. 443, § 13; July 3, 1926, 44 Stat. 814, ch. 739, § 3; Feb. 27, 1931, 46 Stat. 1424, 1428, ch. 317, §§ 2, 4; June 7, 1934, 48 Stat. 926, ch. 426; May 15, 1936, 49 Stat. 1273, ch. 393; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88-241, § 8; July 29, 1970, 84 Stat. 583, Pub. L. 91-358, title I, § 163(g)(1); Apr. 26, 1977, D.C. Law 1-133, title I, §§ 102-104, 23 DCR 9697; Sept. 14, 1982, D.C. Law 4-145, §§ 6, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 12, 29 DCR 5753; Apr. 13, 1999, D.C. Law 12-212, § 2(b), 46 DCR 5; Apr. 27, 2001, D.C. Law 13-289, § 301, 48 DCR 2057; Mar. 2, 2007, D.C. Law 16-195, § 9, 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 202(f), 54 DCR 903; Apr. 27, 2013, D.C. Law 19-266, § 307, 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 268(c), 60 DCR 2064.)

Section references. — This section is referenced in § 23-581, § 50-1105, § 50-1401.01, § 50-1403.02, § 50-2201.03, § 50-2201.05a, § 50-2201.05b, § 50-2201.27, and § 50-2302.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "person is intoxicated as defined by § 50-2206.01(9)" for "person's alcohol concentration is 0.08 grams or more either per 100

milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine" in (a).

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not to exceed \$5,000" in (e).

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act

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of 2012,” was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Legislative history of Law 19-317. — See note to § 50-1401.01.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-1403.03. Suspension of minor’s motor vehicle operator’s permit for alcohol violation.

(a) The Mayor shall suspend the motor vehicle operator’s permit of a person under 21 years of age convicted of violating, or adjudicated in violation of § 25-130. The suspension shall be for the duration required by § 25-130. A copy of the conviction or adjudication shall be forwarded to the Mayor by the court or the administrative body authorized to adjudicate violations under Chapter 1 of Title 25.

(b) Any person found guilty of operating a motor vehicle in the District during the period for which the person’s license or privilege is suspended, shall, for each offense, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(Mar. 3, 1925, ch. 443, § 13b, as added May 24, 1994, D.C. Law 10-122, § 4, 41 DCR 1658; June 11, 2013, D.C. Law 19-317, § 268(d), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (b).

Legislative history of Law 19-317. — See note to § 50-1401.01.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 15. REGISTRATION OF MOTOR VEHICLES.

Subchapter I. General Provisions

Subchapter IV. International Registration Plan Agreements

Sec.

50-1501.01. Definitions.

50-1501.03. Fees classified and use of proceeds designated.

50-1501.04. Unlawful acts; penalty.

Sec.

50-1507.03. Registration.

Subchapter I. General Provisions.

§ 50-1501.01. Definitions.

As used in this subchapter:

(1) The term “motor vehicle” means a vehicle propelled by an internal-combustion engine, electricity, or steam. The term “motor vehicle” shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal assistive mobility device, as defined by § 50-2201.02(12), a

battery-operated wheelchair when operated by a person with a disability, or a motorized bicycle.

(2) The term "person" means an individual, partnership, corporation, or association.

(3) The term "owner" means a person who holds the legal title to a motor vehicle or trailer the registration of which is required in the District of Columbia. If a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the condition stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or if a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of these regulations.

(4) The term "Director" means the Director of the Department of Transportation of the District of Columbia, including assistants or agents duly designated by the Mayor.

(5) The term "dealer" means any person engaged in the business of manufacturing, distributing, or dealing in motor vehicles or trailers.

(6) The term "public highway" means any road, street, alley, or way, open to use of the public, as a matter of right, for purposes of vehicular traffic.

(7) The term "trailer" means a vehicle without motor power intended or used for carrying property or persons and drawn or intended to be drawn by a motor vehicle, whether such vehicle without motor power carries the weight of the property or persons wholly on its own structure or whether a part of such weight rests upon or is carried by a motor vehicle.

(8) The term "farm tractor" means a motor vehicle designed and used primarily for drawing implements of agricultural husbandry.

(9) The term "pneumatic tire" means a tire inflated with compressed air.

(10) The terms "operate" and "operated" shall include operating, moving, standing, or parking any motor vehicle or trailer on a public highway of the District of Columbia.

(10A) The term "class F(I) historic motor vehicle" means any motor vehicle whose manufacturer's model year is at least 25 years old or any motor vehicle which is at least 15 years old and is a make of motor vehicle no longer manufactured; provided, that the motor vehicle has been or is being restored, preserved, or maintained as an exhibition or collector's item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer's original specifications and is used on the public highways for the transportation of passengers or property for occasional pleasure driving or in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, not exceeding a total driving mileage under all conditions of 1,000 miles annually, but in no event used for general transportation. Motor vehicles which are less than 25 years old but which are 15 or more years old and which qualify as historic motor vehicles shall include the following makes, which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard.

(11) The term "class F(II) historic motor vehicle" means any motor vehicle whose manufacturer's model year is at least 25 years old or any motor which

is at least 15 years old and is a make of motor vehicle no longer manufactured; provided, that the motor vehicle has been or is being restored, preserved or maintained as an exhibition or collector's item because of its special historical value or significance, has not been substantially altered or modified from the manufacturer's original specifications and is used on the public highways for the transportation of passengers or property in conjunction with exhibitions, expositions, parades, tours, club activities, or similar activities or events, including transportation directly to or from such activities or events, but in no event used for general transportation. Motor vehicles which are less than 25 years old but which are 15 or more years old and which qualify as historic motor vehicles shall include but not be limited to the following makes which are no longer manufactured: Kaiser, Hudson, DeSoto, Nash, Edsel, Studebaker and Packard.

(12) "Electric vehicle" shall have the same meaning as provided in section 3(4) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, approved September 17, 1976 (90 Stat. 1261; 15 U.S.C. § 2502(4)).

(Aug. 17, 1937, 50 Stat. 679, ch. 690, title IV, § 1; Sept. 8, 1950, 64 Stat. 791, ch. 921, §§ 1, 2; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 15, 1985, D.C. Law 5-176, § 11, 32 DCR 748; Mar. 26, 1999, D.C. Law 12-184, § 3(a), 45 DCR 7796; Mar. 25, 2003, D.C. Law 14-235, § 7, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 206, 53 DCR 10225; Mar. 20, 2009, D.C. Law 17-315, § 2(a), 56 DCR 203; Mar. 19, 2013, D.C. Law 19-252, § 102(a), 59 DCR 14932; Apr. 27, 2013, D.C. Law 19-290, § 6(a), 60 DCR 2343.)

Section references. — This section is referenced in § 3-1351, § 50-702, and § 50-1501.03.

Effect of amendments.

The 2013 amendment by D.C. Law 19-290 rewrote (1).

Legislative history of Law 19-290. — Law 19-290, the "Motorized Bicycle Amendment Act

of 2012," was introduced in Council and assigned Bill No. 19-995. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

§ 50-1501.03. Fees classified and use of proceeds designated.

(a)(1) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under this subchapter, the registration fee provided in this section, except that in the event the Council of the District of Columbia prescribes and the Mayor of the District of Columbia issues as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Council may charge a fee not exceeding \$.50 in addition to all other fees which may be required. Any person ordering a tag with special markings unique to that person shall pay a one-time application fee of \$100, and may obtain a replacement if a tag is lost or stolen upon payment of a fee of \$25 per tag. Any person displaying a tag already approved

for use by member of an organization other than Disabled American Veterans shall pay a one-time application fee of \$100, and may obtain a replacement if a tag is lost or stolen upon payment of a \$25 fee per tag. Any person ordering Anacostia River Commemorative License Plates shall pay the fees as set forth in § 8-102.07(b). Any person ordering veterans identification tags pursuant to § 50-1501.02a shall pay the fees as set forth in § 50-1501.02a(b)(2).

(2) The Mayor may modify the schedule of fees established in this subsection by rulemaking, pursuant to subchapter I of Chapter 5 of Title 2.

(3) The application fee for an organization seeking approval of an organization tag shall be \$100, which may be modified by the Mayor to cover administrative costs.

(b)(1) *Class A.* — For each passenger vehicle, including a motor vehicle classified by the Mayor or his or her designated agent as a class F(I) historic motor vehicle which meets the criteria established under § 50-1501.01(10A), except for passenger vehicles licensed under § 47-2829, based upon the manufacturer's shipping weight, as follows:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	\$ 72
Class II (3,500 — 4,999 pounds)	\$115
Class III (5,000 pounds or greater)	\$155
Class IV A new motor vehicle, other than a motorcycle and motorized bicycle, with an estimated average miles per gallon ("MPG") for city driving at or above 40 MPG, as determined in accordance with 40 CFR § 600.001-08 et seq., and published in the Fuel Economy Guide by the United States Environmental Protection Agency and the United States Department of Energy). This provision shall only apply to the first 2 years of the vehicle's registration, after which the vehicle shall be treated as a Class I, Class II, or Class III, whichever is applicable.)	\$ 36

(2) *Class B.* — For each commercial vehicle, tractor, and passenger carrying vehicle for hire, including vehicles licensed under § 47-2829, based upon the manufacturer's shipping weight, as follows:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	\$125
Class II (3,500 — 4,999 pounds)	\$160
Class III (5,000 — 6,999 pounds)	\$220
Class IV (7,000 — 9,999 pounds)	\$300
Class V (10,000 or greater)	\$575 plus \$25 per each additional 1,000 pounds over 10,000 pound[s]

(3) *Class C.* — For each trailer, based upon the manufacturer's shipping weight, as follows:

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Weight Class	Registration Fee
Class I (1,499 pounds or less)	\$50
Class II (1,500 — 3,499 pounds)	\$125
Class III (3,500 — 4,999 pounds)	\$250
Class IV (5,000 — 6,999 pounds)	\$400
Class V (7,000 — 9,999 pounds)	\$500
Class VI (10,000 pounds or greater)	\$500 plus \$50 per each additional 1,000 pounds over 10,000 pounds.

(4) *Class D.* — For each motorcycle, \$52.

(5) *Class E.* — For each motor-driven cycle, \$30.

(6) *Class F.* — For each motor vehicle classified by the Mayor or his or her designated agent as a class F(II) historic motor vehicle which meets the criteria established under § 50-1501.01(11), \$25.

(7) *Class G.* — For dealer's identification tags, dealer transport identification tags, and manufacturer identification tags, per tag, \$75.

(8) *Class H.* — For each motor vehicle propelled by fuel not subject to taxation under Chapter 23 of Title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(b-1) *Non-resident taxi and limousine driver vehicle registration.* — In addition to any fees that may be due under any other statute or regulation, a driver who was exempted from the residency requirements to register a vehicle within the District of Columbia under § 50-1501.02(c)(5)(B) shall be charged an additional fee of \$100.

(c) The Mayor may prorate the fee for registration by an owner or dealer if the registration is issued by the Mayor for a period not to exceed 23 months.

(d) The proceeds from fees payable under this chapter shall be paid into the General Fund of the District of Columbia as established by the Revenue Funds Availability Act of 1975, effective January 22, 1976 (D.C. Law 1-42; 22 DCR 6318); provided, that:

(1) The fees collected under subsection (b-1) of this section shall be paid into the Out-of-State Vehicle Registration Special Fund established by § 50-1501.03a;

(2) The fees collected for Anacostia River Commemorative License Plates shall be deposited in the Anacostia River Clean Up and Protection Fund established by § 8-102.05(a); and

(3) The fees collected for veterans' motor vehicle identification tags under § 50-1501.02a shall be deposited in the Office of Veterans Affairs Fund established by § 49-1004.

(e) Notwithstanding the provisions of this subchapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by subparagraph (A) of subsection (b)(2) and subsections (b)(3) and (b)(8) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted.

(f) No annual motor vehicle registration fee shall be required for a noncommercial motor vehicle owned by any veteran who has been classified by the United States Veterans Administration as having a total and permanent disability as a result of a service incurred or aggravated condition; provided, that no more than 1 such vehicle per qualified veteran shall receive this fee exemption.

(g) The Mayor shall direct the Director of the Department of Transportation to design and provide application forms for the exemption provided in subsection (f) of this section. The application shall be accompanied by a statement that the veteran has been classified as having a total and permanent disability by the Veterans Administration so as to meet the requirements of this subsection, and that such disability is the result of a service incurred or aggravated condition.

(h) To synchronize inspection and registration due dates, the Mayor may declare that a vehicle's inspection or registration shall expire prior to the date originally established; provided, that the Mayor shall reduce the fee for the vehicle's next registration or inspection renewal by a percentage equal to the percentage of the reduction of the original time period.

(i) The Mayor may require a 2 year registration period for any registrant.

(j) The Mayor may refund any portion of the registration fee if the registrant does not maintain the registration for the entire registration period established.

(k) The Mayor may allow any person to pay registration fees in installments, as determined by the Mayor.

(l) The Mayor may charge an additional fine of \$100 for any motor vehicle whose inspection or registration is not renewed by the expiration date, unless the owner surrenders the tags on or before that date.

(Aug. 17, 1937, 50 Stat. 681, title IV, ch. 690, § 3; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, title VI, ch. 218, §§ 602, 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 86-716, §§ 1-3; Oct. 31, 1969, 83 Stat. 174, Pub. L. 91-106, title IV, § 402; Oct. 21, 1975, D.C. Law 1-23, title I, § 101, 22 DCR 2091; Jan. 22, 1976, D.C. Law 1-42, § 6, 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title I, § 101, 23 DCR 533; April 7, 1977, D.C. Law 1-110, § 5, 23 DCR 8740; April 19, 1977, D.C. Law 1-124, title I, § 101, 23 DCR 8749; Feb. 25, 1978, D.C. Law 2-41, § 2, 24 DCR 3629; Mar. 16, 1978, D.C. Law 2-55, §§ 2, 3, 5, 24 DCR 5424; Mar. 16, 1978, D.C. Law 2-60, § 2, 24 DCR 5778; Apr. 3, 1982, D.C. Law 4-93, § 3, 29 DCR 749; Mar. 10, 1983, D.C. Law 4-206, § 4, 50 DCR 193; June 22, 1983, D.C. Law 5-14, § 802, 30 DCR 2632; Aug. 17, 1991, D.C. Law 9-30, § 2(b), 38 DCR 4215; Mar. 17, 1993, D.C. Law 9-239, § 2, 40 DCR 625; June 5, 2003, D.C. Law 14-307, § 1705(b), 49 DCR 11664; Apr. 8, 2005, D.C. Law 15-307, §§ 401(b), 501, 52 DCR 1700; June 16, 2006, D.C. Law 16-129, § 3, 53 DCR 4716; Mar. 14, 2007, D.C. Law 16-279, § 403(b), 54 DCR 903; Apr. 24, 2007, D.C. Law 16-305, § 78, 53 DCR 6198; Mar. 26, 2008, D.C. Law 17-130, § 2(b), 55 DCR 1655; Aug. 16, 2008, D.C. Law 17-219, § 6007, 55 DCR 7598;

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Mar. 20, 2009, D.C. Law 17-315, § 2(b), 56 DCR 203; Sept. 23, 2009, D.C. Law 18-55, § 9(b)(1), 56 DCR 5703; Mar. 12, 2011, D.C. Law 18-309, § 2(b), 57 DCR 12389; Apr. 27, 2013, D.C. Law 19-290, § 6(b), 60 DCR 2343.)

Section references. — This section is referenced in § 8-102.07, § 9-1111.15, § 50-1501.02, and § 50-1503.01.

Effect of amendments.

The 2013 amendment by D.C. Law 19-290

substituted “motor-driven cycle” for “motorized bicycle” in (b)(5).

Legislative history of Law 19-290. — See note to § 50-1501.01.

§ 50-1501.04. Unlawful acts; penalty.

(a) It shall be unlawful:

(1) For any person to operate any motor vehicle or trailer upon any public highway of the District of Columbia (except motor vehicles or trailers operated by nonresidents exempted under the provisions of § 50-1401.02):

(A) If such motor vehicle or trailer is not registered or covered by a dealer’s registration or by a special use certificate as required by this subchapter;

(B) If such motor vehicle or trailer does not have attached thereto and displayed thereon the identification tags required therefor; or

(C) If such person does not have in his possession or in the motor vehicle or trailer operated the registration certificate or special use certificate required therefor.

(D) Repealed.

(2) For the owner of any motor vehicle or trailer knowingly to permit the operation thereof contrary to any provision of paragraph (1) of this subsection;

(3) To use a false or fictitious name or address in any application for registration or for a special use certificate, or any renewal or duplicate thereof, or knowingly to make any false statement or conceal any material fact in any such application; or

(4) For the owner of any motor vehicle to knowingly use or permit the use of any motor vehicle with a counterfeit, stolen, or otherwise fraudulent temporary identification tag.

(b)(1) Except as provided in subsection (c) of this section, any person violating any provision of this subchapter or the regulations made or promulgated under the authority hereof shall upon conviction thereof be subject to a fine of not more than \$1000 or imprisonment of not more than 30 days, or both such fine and imprisonment. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General for the District of Columbia or any of his assistants in the name of the District of Columbia.

(2) A motor vehicle being used in violation of subsection (a)(4) of this section shall be subject to seizure by the Mayor or any law enforcement officer of the District and to forfeiture to the District in accordance with to 6A DCMR §§ 805-810; such seizure and forfeiture may be in addition to the imposition of a fine or imprisonment as provided for in paragraph (1) of this subsection.

(3) The fine set forth in this section shall not be limited by § 22-3571.01.

(c)(1) A person violating subsection (a)(1) or (2) of this section shall be assessed the following civil penalties for a failure to maintain a valid and current registration:

(A) A fine of \$200 for a lapse in registration between one and 30 days; and

(B) A fine of \$200 for each additional unregistered month or portion thereof, up to a maximum of \$2,400.

(2) Violations under this subsection shall be adjudicated pursuant to Chapter 23 of this title [§ 50-2301.01 et seq.].

(d) Nothing in this section shall be interpreted as impeding the ability of a public safety officer to impound a vehicle that poses a threat to public health or safety.

(Aug. 17, 1937, 50 Stat. 682, ch. 690, title IV, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Sept. 8, 1950, 64 Stat. 794, ch. 921, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 5, 2005, D.C. Law 15-287, § 2(b), 52 DCR 1437; Mar. 14, 2007, D.C. Law 16-279, § 403(c), 54 DCR 903; Mar. 25, 2009, D.C. Law 17-353, §§ 197(b), 198, 56 DCR 1117; Oct. 22, 2012, D.C. Law 19-183, § 2, 59 DCR 9429; June 11, 2013, D.C. Law 19-317, § 112(g), 60 DCR 2064.)

Section references. — This section is referenced in § 16-801 and § 50-2302.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 added (b)(3).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter IV. International Registration Plan Agreements.

§ 50-1507.03. Registration.

(a) The Mayor shall implement a program for owners and apportioned operators to obtain apportioned registrations for their fleets as promulgated under the IRP.

(b) Any vehicle qualifying for IRP and that lists the District of Columbia as the established place of business must declare the District of Columbia as its base jurisdiction for purpose of the IRP and obtain a base plate from the District of Columbia.

(c) Vehicles qualifying for the IRP and engaged in interjurisdictional movement, but not apportioned or covered by reciprocity, shall acquire a trip permit prior to entering the District of Columbia.

(d) Trucks and truck tractors, combinations of vehicles having a combined gross vehicle weight of 26,000 pounds or less may be proportionally registered at the option of the registrant.

(e) At no point during operation, shall the gross weight of a vehicle registered pursuant to this subchapter, or of the combination of vehicles of

which the vehicle is a part, exceed the gross weight on the basis of which it is registered.

(f) Any owner or apportioned operator who fails to comply with subsection (b), (c) or (e) of this section shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or jailed not longer than 180 days, or both, for each violation. In addition, a police officer may impound the vehicle until a valid registration or a trip permit is obtained.

(Sept. 5, 1997, D.C. Law 12-14, § 4, 44 DCR 3620; Apr. 27, 2001, D.C. Law 13-289, § 202, 48 DCR 2057; Mar. 14, 2007, D.C. Law 16-279, § 404, 54 DCR 903; June 11, 2013, D.C. Law 19-317, § 269, 60 DCR 2064.)

Section references. — This section is referenced in § 50-1401.02 and § 50-1501.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “not to exceed \$500” in (f).

Legislative history of Law 19-317. — See note to § 50-1501.04.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

SUBTITLE V. NON-MOTORIZED VEHICLES.

CHAPTER 16. REGULATION OF BICYCLES.

Subchapter I-A. Access to Justice for Bicyclists

Sec.

50-1621. Civil action for bicyclists.

Subchapter I-A. Access to Justice for Bicyclists.

§ 50-1621. Civil action for bicyclists.

(a) An individual who, while riding a bicycle, is the victim of an assault or battery by a motorist, and prevails in a civil action for such assault or battery, shall be entitled to:

- (1) Statutory damages of \$1,000 or actual damages, whichever is greater;
- (2) Reasonable attorney’s fees and costs; provided, that the total amount of damages is less than \$10,000; and
- (3) Any other relief available under the law.

(b) For the purposes of this section, the term “motorist” means an individual who operates a motor vehicle, as defined in § 50-2301.02(5A).

(Apr. 20, 2013, D.C. Law 19-264, § 2, 60 DCR 1346.)

Legislative history of Law 19-264. — Law 19-264, the “Access to Justice for Bicyclists Act of 2012,” was introduced in Council and assigned Bill No. 19-475. The Bill was adopted on first and second readings on Dec. 4, 2012 and

Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 18, 2013, it was assigned Act No. 19-625 and transmitted to Congress for its review. D.C. Law 19-264 became effective on April 20, 2013.

SUBTITLE VI. SAFETY.

CHAPTER 19. MOTOR VEHICLE OPERATORS; IMPLIED CONSENT TO CHEMICAL TESTING.

Subchapter I. Chemical Testing

- Sec.
50-1901. Definitions.
50-1902. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents. [Repealed].
50-1903. Blood tests; medical professional to withdraw blood.
50-1904. Availability of chemical test results.
50-1904.01. Preliminary breath test.
50-1904.02. Chemical testing after arrest.

Subchapter II. Refusal to Submit Specimens for Chemical Testing

- 50-1905. Test refusal; penalty; evidence of refusal.

Sec.

- 50-1906. License revocation or denial order; hearing.
50-1907. Judicial review.

Subchapter III. Watercraft

- 50-1908. Definitions.
50-1909. Preliminary breath test.
50-1910. Chemical testing after arrest.
50-1911. Test refusal; evidence of refusal.
50-1912. Penalty.

Subchapter I. Chemical Testing.

§ 50-1901. Definitions.

For the purposes of this chapter, the term:

(1) "Chemical test" or "chemical testing" means any qualitative or quantitative procedure which is designed to demonstrate the existence or absence of a chemical compound or chemical group. Any handheld and portable breath testing instrument, otherwise known as a roadside breath test, is excluded from this definition.

(2) "Collision" means an impact between the operator's vehicle, or anything attached to or transported by the vehicle, and anything else, regardless of whether it is a person, a wild or domestic animal, real property, or personal property.

(3) "Commercial vehicle" means a vehicle used to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of greater than 26,000 pounds or a lesser rating as determined by federal regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) If the vehicle is designed to transport more than 15 passengers, including the driver;

(C) If the vehicle is a locomotive or a streetcar;

(D) If the vehicle is used to transport a material found to be hazardous by the Mayor in accordance with Chapter 14 of Title 8 [§ 8-1401 et seq.] or by the Secretary of Transportation in accordance with the Hazardous Materials

Transportation Act, approved January 3, 1975 (88 Stat. 2156; 49 U.S.C. § 1801 et seq.); or

(E) If the vehicle is a vehicle for hire.

(4) "Court" means the Superior Court of the District of Columbia, except when used in the definition of "prior offense" when it shall also include courts of other jurisdictions.

(5) "Drug" means any chemical substance that affects the processes of the mind or body, including but not limited to a controlled substance as defined in § 48-901.02(4) and any prescription or non-prescription medication.

(6) "Highway" means any street, road, or public thoroughfare, or the entire width between the boundary lines of every publicly or privately maintained way, when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

(7) "Impaired" means a person's ability to operate or be in physical control of a vehicle is affected, due to consumption of alcohol or a drug or a combination thereof, in a way that can be perceived or noticed.

(8) "Intoxicated" means:

(A) Except as provided in subparagraph (B) of this paragraph, that:

(i) An alcohol concentration at the time of testing of 0.08 grams or more per 100 milliliters of the person's blood or per 210 liters of the person's breath, or of 0.10 grams or more per 100 milliliters of the person's urine; or

(ii) Any measurable amount of alcohol in the person's blood, urine, or breath if the person is under 21 years of age.

(B) If operating or in physical control of a commercial vehicle, that:

(i) An alcohol concentration at the time of testing of 0.04 grams or more per 100 milliliters of the person's blood or per 210 liters of the person's breath, or of 0.08 grams or more per 100 milliliters of the person's urine; or

(ii) Any measurable amount of alcohol in the person's blood, urine, or breath if the person is under 21 years of age.

(9) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

(10) "License" means any operator's permit or any other license or permit to operate a motor vehicle issued under the laws of the District, including:

(A) Any temporary or learner's permit;

(B) The privilege of any person to drive a motor vehicle whether or not such person holds a valid license; and

(C) Any nonresident's operating privilege.

(11) "Mayor" means the Mayor of the District, or his or her designee.

(12) "Measurable amount" means any amount of alcohol capable of being, but not required to be, measured.

(13) "Medical professional" means a physician, registered nurse, licensed practical nurse, or any person who by certification or licensure is qualified to draw blood.

(14) "Motor vehicle" means all vehicles propelled by internal combustion engines, electricity, or steam. The term "motor vehicle" shall not include personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when operated by a person with a disability.

(15) "Nonresident" shall include any person who is not a resident of the District.

(16) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by the laws of the District relating to the operation by such person of a motor vehicle, or the use of a vehicle owned by such person, in the District.

(17) "Prior offense" means any guilty plea or verdict, including a finding of guilty in the case of a juvenile, for an offense under District law or a disposition in another jurisdiction for a substantially similar offense which occurred prior to the current offense regardless of when the arrest occurred. The term "prior offense" does not include an offense where the later of any term of incarceration, supervised release, parole, or probation ceased or expired more than 15 years before the arrest on the current offense.

(18) "Specimen" means that quantity of a person's blood, breath, or urine necessary to conduct chemical testing to determine alcohol or drug content. A single specimen may be comprised of multiple breaths into a breath test instrument if such is necessary to complete a valid breath test, or a single blood draw or single urine sample regardless of how many times the blood or urine sample is tested.

(19) "Vehicle" means any appliance, conveyance, or carrier that moves over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(20) "Vehicle for hire" means:

(A) Any motor vehicle operated in the District by a private concern or individual as an ambulance, funeral car, or sightseeing vehicle, or for which the rate is fixed solely by the hour;

(B) Any motor vehicle operated in the District by a private concern used for services including transportation paid for by a hotel, venue, or other third party;

(C) Any motor vehicle used to provide transportation within the District between fixed termini or on a schedule, including vehicles operated by the Washington Metropolitan Area Transit Authority or other public authorities, not including rental cars; or

(D) Any other vehicle that provides transportation for a fee not operated on a schedule or between fixed termini and operating in the District; including taxicabs, limousines, party buses, and pedicabs.

(Oct. 21, 1972, 86 Stat. 1016, Pub. L. 92-519, § 1; Sept. 14, 1982, D.C. Law 4-145, § 4(a), 29 DCR 3138; Mar. 15, 1985, D.C. Law 5-176, § 5, 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 3(a), 38 DCR 7274; Mar. 25, 2003, D.C. Law 14-235, § 9, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 208, 53 DCR 10225; Apr. 27, 2013, D.C. Law 19-266, § 101(c)(1), 59 DCR 12957.)

Section references. — This section is referenced in § 5-1419.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 rewrote this section.

Legislative history of Law 19-266. — Law 19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on

first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

Editor's notes. — Section 101(a) of D.C. Law 19-266 designated §§ 50-1901 to 50-1904 as subchapter I of this chapter.

§ 50-1902. Implied consent to blood-alcohol content or blood-drug content tests; administration; accidents. [Repealed].

Repealed.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 2; Sept. 14, 1982, D.C. Law 4-145, § 4(b), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 7, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(b), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(a), 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 4(a), 46 DCR 5; Apr. 12, 2000, D.C. Law 13-91, § 152, 47 DCR 520; Mar. 2, 2007, D.C. Law 16-195, § 10(a), 53 DCR 8675; Apr. 27, 2013, D.C. Law 19-266, § 101(c)(2), 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1903. Blood tests; medical professional to withdraw blood.

(a) Only a medical professional acting at the request of a law enforcement officer may withdraw blood, subject to the provisions of this chapter, for the purpose of determining the alcohol or drug content thereof. This limitation shall not apply to the taking of breath or urine specimens.

(b)(1) Except as provided in paragraph (2) of this subsection, the following persons are immune from criminal and civil liability based upon a claim of assault and battery, or any other claim that is not a claim of malpractice, for any act performed in collecting a person's blood:

(A) Any law enforcement officer who assists in the collection of specimens from a person pursuant to this section;

(B) Any medical professional, staff, or security personnel who collects or assists in the collection of specimens from a person pursuant to this section; and

(C) Any hospital, first-aid station, clinic, or other location where specimens are collected from a person pursuant to this section.

(2) The immunity provided in this subsection shall not apply to a person who collects or assists in the collection of specimens if that person commits gross negligence or engages in intentionally wrongful conduct.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 3; Sept. 14, 1982, D.C. Law 4-145, § 4(c), (f), 29 DCR 3138; Apr. 27, 2013, D.C. Law 19-266, § 101(c)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1904.02 and § 50-1910.

Legislative history of Law 19-266. — See note to § 50-1901.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 rewrote this section.

§ 50-1904. Availability of chemical test results.

Full information concerning the chemical test results administered under this chapter, including records as provided in § 5-1501.06, shall be made available to the person from whom specimens were obtained pursuant to Rule 16 of the District of Columbia Superior Court Rules of Criminal Procedure.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 4; Apr. 27, 2013, D.C. Law 19-266, § 101(c)(4), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 rewrote this section.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1904.01. Preliminary breath test.

(a) When a law enforcement officer has reasonable grounds to believe that a person was operating or in physical control of a vehicle within the District while intoxicated or while the person's ability to operate a vehicle is impaired by the consumption of alcohol or a drug or a combination thereof, the law enforcement officer may, without making an arrest or issuing a violation notice, request that the person submit to a preliminary breath test, to be administered by the law enforcement officer, who shall use a device which the Mayor has approved by rule for that purpose.

(b) Before administering the test, the law enforcement officer shall advise the person to be tested that the preliminary breath test is voluntary and that the results of the test will be used to aid in the law enforcement officer's decision whether to arrest the person.

(c) The results of the preliminary breath test shall be used by the law enforcement officer to aid in the decision whether to arrest the person, and the results of the test shall not be used as evidence by the District in any prosecutions and shall not be admissible in any judicial proceeding except in any judicial or other proceeding in which the validity of the arrest or the conduct of the law enforcement officer is an issue.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 4a, as added Apr. 27, 2013, D.C. Law 19-266, § 101(d)(1), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Editor's notes. — Section 101(b) of D.C. Law 19-266 designated §§ 50-1905 to 50-1907 as subchapter II of this chapter.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1904.02. **Chemical testing after arrest.**

(a) Except as provided in subsection (b) of this section, when a law enforcement officer has reasonable grounds to believe that a person was operating or in physical control of a motor vehicle within the District while intoxicated or while the person's ability to operate a motor vehicle is impaired by the consumption of alcohol or a drug or a combination thereof, after arrest of the person, the person shall:

(1) Except as provided in paragraph (2) of this subsection, be deemed to have given his or her consent, subject to the provisions of this chapter, to submitting 2 specimens for chemical testing of the person's blood, breath, or urine, for the purpose of determining alcohol or drug content; and

(2) Submit 2 specimens for chemical testing of his or her blood, breath, or urine for the purpose of determining alcohol or drug content when he or she is involved in a collision in the District.

(b) When a person is required to submit specimens for chemical testing pursuant to subsection (a) of this section, a law enforcement officer shall elect which types of specimens will be collected from the person and the law enforcement officer or a medical professional shall collect the specimen subject to the restriction in § 50-1903(a); provided, that the person may object to a particular type of specimen collection for chemical testing on valid religious or medical grounds. If a person objects to blood collection on valid religious or medical grounds, that person shall only be required to submit breath or urine specimens for collection.

(c) In addition to submitting specimens for chemical testing as provided in this section, a person may also submit specimens for chemical testing administered to him or her by a medical professional of his or her own choosing. The failure or inability of the person to obtain additional specimens or chemical tests shall not preclude the admission of chemical tests results that were the product of the law enforcement officer's request under this section.

(d) Before collecting specimens for chemical testing, the law enforcement officer shall advise the operator of the motor vehicle about the requirements of this chapter.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 4b, as added Apr. 27, 2013, D.C. Law 19-266, § 101(d)(1), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1905.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-1901.

Subchapter II. Refusal to Submit Specimens for Chemical Testing.

§ 50-1905. Test refusal; penalty; evidence of refusal.

(a)(1) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1904.02(a), he or she shall be informed that failure or refusal to submit to chemical testing will result in the revocation of his or her license or privilege to drive in the District of Columbia as provided in this section.

(2) If a person, after having been informed as provided in paragraph (1) of this subsection, still refuses to submit to chemical testing, no test shall be given, but the Mayor, upon receipt of a sworn report of the law enforcement officer that he or she had reasonable grounds to believe the arrested person had been driving or was in physical control of a motor vehicle upon the highways while the person was intoxicated or while the person's ability to operate a motor vehicle was impaired by the consumption of alcohol or a drug or a combination thereof, and that the person had refused to submit 2 specimens for chemical testing, shall:

(A) Revoke his or her license or privilege to drive in the District of Columbia for a period of 12 months; or

(B) Deny the person the issuance of a license, if the person is without a license to operate a motor vehicle in the District, for a period of 12 months after the date of the alleged violation.

(b) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1904.02(a), and the person has had a conviction for a prior offense under § 50-2206.11, § 50-2206.12, or § 50-2206.14, there shall be a rebuttable presumption that the person is under the influence of alcohol or a drug or any combination thereof.

(c) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1904.02(a), evidence of such refusal shall be admissible in any civil or criminal proceeding arising as a result of the acts alleged to have been committed by the person before the arrest.

(d)(1) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1904.02(a) and the person was involved in a collision that resulted in a fatality, except as provided in paragraph (2) of this subsection, a law enforcement officer may employ whatever means are reasonable to collect blood specimens from the person if the law enforcement officer has reasonable grounds to believe that the person was intoxicated or under the influence of alcohol or of any drug or any combination thereof.

(2) If a person required to submit blood testing under paragraph (1) of this subsection objects on valid religious or medical grounds, that person shall not be required to submit blood specimens but the law enforcement officer may employ whatever means are reasonable to collect breath or urine specimens from the person if the law enforcement officer has reasonable grounds to believe that the person was intoxicated or under the influence of alcohol or of any drug or any combination thereof.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 5; Sept. 14, 1982, D.C. Law 4-145, § 4(d), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 8, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 3(c), 38 DCR 7274; May 24, 1994, D.C. Law 10-122, § 6(b), 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 4(b), 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 10(b), 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 104(a), 54 DCR 903; Apr. 27, 2013, D.C. Law 19-266, § 101(d)(2), 59 DCR 12957.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 rewrote this section.

Legislative history of Law 19-266. — See

note to § 50-1901.

§ 50-1906. License revocation or denial order; hearing.

(a) Whenever any license, or privilege to drive in the District of Columbia, has been revoked or denied under the provisions of this chapter, the reasons therefor shall be set forth in the order of revocation or denial, as the case may be. Such order shall take effect in 10 days (15 days, if the person is a nonresident) after service of notice on the person whose license or privilege to drive in the District of Columbia is to be revoked or who was denied a license. A hearing on the revocation shall be held if the respondent files a request for a hearing within 10 days (15 days if the person is a nonresident) of service of the notice. Such hearing by the Mayor shall cover the issues of:

(1) Whether a law enforcement officer had reasonable grounds to believe such person had been operating or was in physical control of a motor vehicle upon the highway while intoxicated or while the person's ability to operate a motor vehicle was impaired by alcohol or a drug or any combination thereof; and

(2) Whether such person, having been placed under arrest, refused to submit specimens for chemical testing, after having been informed of the consequences of such refusal.

(b) If, following the hearing provided in subsection (a) of this section, the Mayor shall sustain the order of revocation, the same shall become effective immediately.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 6; Sept. 14, 1982, D.C. Law 4-145, § 4(e), (f), 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 9, 29 DCR 5753; Apr. 13, 1999, D.C. Law 12-212, § 4(c), 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 10(c), 53 DCR 8675; Mar. 14, 2007, D.C. Law 16-279, § 104(b), 54 DCR 903; Apr. 27, 2013, D.C. Law 19-266, § 101(d)(3), 59 DCR 12957.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 rewrote (a)(1); and substituted "submit specimens for chemical testing" for "submit to the test or tests" in (a)(2).

Legislative history of Law 19-266. — See

note to § 50-1901.

§ 50-1907. Judicial review.

Any person aggrieved by a final order of the Mayor revoking his or her license or denying him or her a license under the authority of this subchapter, may obtain a review thereof in accordance with § 2-510.

(Oct. 21, 1972, 86 Stat. 1018, Pub. L. 92-519, § 7; Apr. 27, 2013, D.C. Law 19-266, § 101(d)(4), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 substituted “his or her license” for “his license”; substituted “denying him or her” for “denying him”; and substituted “this subchapter” for “this chapter.”

Legislative history of Law 19-266. — See note to § 50-1901.

Subchapter III. Watercraft.

§ 50-1908. Definitions.

For the purposes of this subchapter, the term:

(1) “Collision” means an impact between the operator’s watercraft, or anything attached to or transported by the watercraft, and anything else, regardless of whether it is a person, a wild or domestic animal, real property, or personal property.

(2) “Watercraft” means a boat, ship, or other craft used for water transportation, as well as water skis, aquaplane, sailboard, or similar vessel.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 7a, as added Apr. 27, 2013, D.C. Law 19-266, § 101(e), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1909. Preliminary breath test.

(a) When a law enforcement officer has reasonable grounds to believe that a person is or has been operating or in physical control of a watercraft within the District while intoxicated or while the person’s ability to operate a watercraft is impaired by the consumption of alcohol or a drug or a combination thereof, the law enforcement officer may, without making an arrest or issuing a violation notice, request that the person submit to a preliminary breath test, to be administered by the law enforcement officer, who shall use a device which the Mayor has approved by rule for that purpose.

(b) Before administering the test, the law enforcement officer shall advise the person to be tested that the test is voluntary and that the results of the test will be used to aid in the law enforcement officer’s decision whether to arrest the person.

(c) The results of the preliminary breath test shall be used by the law enforcement officer to aid in the decision whether to arrest the person, and the results of the test shall not be used as evidence by the District in any prosecutions and shall not be admissible in any judicial proceeding except in

any judicial or other proceeding in which the validity of the arrest or the conduct of the law enforcement officer is an issue.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 7b, as added Apr. 27, 2013, D.C. Law 19-266, § 101(e), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.
Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1910. Chemical testing after arrest.

(a) Except as provided in subsection (b) of this section, any person who operates or who is in physical control of any watercraft within the District and a law enforcement officer has reasonable grounds to believe that the person is operating or in physical control of a watercraft while intoxicated or while the person's ability to operate a watercraft is impaired by the consumption of alcohol or a drug or a combination thereof, after arrest shall:

(1) Except as provided in paragraph (2) of this subsection, be deemed to have given his or her consent, subject to the provisions of this chapter, to submitting 2 specimens for chemical testing of the person's blood, breath, or urine, for the purpose of determining alcohol or drug content; and

(2) Submit 2 specimens for chemical testing of his or her blood, breath, or urine for the purpose of determining alcohol or drug content when he or she is involved in a collision in the District.

(b) When a person is required to submit specimens for chemical testing pursuant to subsection (a) of this section, a law enforcement officer shall elect which types of specimens will be collected from the person and the law enforcement officer or a medical professional shall collect the specimen subject to the restriction in § 50-1903(a); provided, that the person may object to a particular type of specimen collection for chemical testing on valid religious or medical grounds. If a person objects to blood collection on valid religious or medical grounds, that person shall only be required to submit breath or urine specimens for collection.

(c) In addition to submitting specimens for chemical testing as provided in this section, a person may also submit specimens for chemical testing administered to him or her by a medical professional of his or her own choosing. The failure or inability of the person to obtain additional specimens or chemical tests shall not preclude the admission of chemical tests results that were the product of the law enforcement officer's request.

(d) Before collecting specimens for chemical testing, the law enforcement officer shall advise the operator of the watercraft about the requirements of this chapter.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 7c, as added Apr. 27, 2013, D.C. Law 19-266, § 101(e), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1911.
Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this

section.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1911. Test refusal; evidence of refusal.

(a) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1910(a), he or she shall be informed that failure or refusal to submit to chemical testing will result in his or her inability to operate a watercraft in the District of Columbia as provided in § 50-1912.

(b) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1910(a), and the person has a prior offense under § 50-2206.31 or § 50-2206.32, there shall be a rebuttable presumption that the person is under the influence of alcohol or a drug or any combination thereof.

(c) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1910(a), evidence of such refusal shall be admissible in any civil or criminal proceeding arising as a result of the acts alleged to have been committed by the person before the arrest.

(d)(1) If a person under arrest refuses to submit specimens for chemical testing as provided in § 50-1910(a), and the person was involved in a collision that resulted in a fatality, except as provided in paragraph (2) of this subsection, a law enforcement officer may employ whatever means are reasonable to collect blood specimens from the person if the law enforcement officer has reasonable grounds to believe that the person was intoxicated or was under the influence of alcohol or of any drug or any combination thereof.

(2) If a person required to submit to blood collection under paragraph (1) of this subsection objects on valid religious or medical grounds, that person shall not be required to submit blood specimens but the law enforcement officer may employ whatever means are reasonable to collect breath or urine specimens from the person if the law enforcement officer has reasonable grounds to believe that the person was intoxicated or was under the influence of alcohol or of any drug or any combination thereof.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 7d, as added Apr. 27, 2013, D.C. Law 19-266, § 101(e), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-1912. Penalty.

If a person refuses to submit to chemical testing under this subchapter, the Superior Court of the District of Columbia shall order the person not to operate any watercraft for at least one year. A refusal to submit to any test as required by this section shall be punishable by a fine not more than the amount set forth in § 22-3571.01, imprisonment of 90 days, or both.

(Oct. 21, 1972, 86 Stat. 1017, Pub. L. 92-519, § 7e, as added Apr. 27, 2013, D.C. Law 19-266, § 101(e), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 270, 60 DCR 2064.)

Section references. — This section is referenced in § 50-1911.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 substituted “fine not more than the amount set forth in § 22-3571.01” for “\$500 fine”.

Legislative history of Law 19-266. — See note to § 50-1901.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality

Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 21A. SAFETY IMPACT OF FINE REDUCTIONS.

Sec.

50-2111. Safety impact of fine reductions.

§ 50-2111. Safety impact of fine reductions.

Within 18 months of May 1, 2013, the Mayor shall transmit to the Council an assessment of the safety impact, if any, resulting from the reduced fines required by Title III of this act, which shall include a detailed analysis of any changes in moving violation rates and repeat violation rates.

(May 1, 2013, D.C. Law 19-307, § 101, 60 DCR 2753.)

Legislative history of Law 19-307. — Law 19-307, the “Safety-Based Traffic Enforcement Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1013. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Enacted without signature of the Mayor on February 5, 2013, it was assigned Act No. 19-674 and transmitted to Congress for its review. D.C. Law 19-307 became effective on May 1, 2013.

References in text. — “Title III of this act,” referred to in this section, is D.C. Law 19-307, § 301, which amended Section 2600.1 of Title 18 of the District of Columbia Municipal Regulations. The applicability of those DCMR amendments are governed by D.C. Law 19-307, § 401(b).

Editor’s notes. — Applicability of D.C. Law 19-307: Section 401(a) of D.C. Law 19-307 provided that this chapter shall apply as of May 1, 2013.

SUBTITLE VII. TRAFFIC.

CHAPTER 22. REGULATION OF TRAFFIC.

Subchapter I. General Provisions

Part A

Traffic Act, 1925

- Sec.
 50-2201.02. Definitions.
 50-2201.03. Mayor to make rules; Department of Transportation; Director; Congressional and Council parking; title fees; common carriers; penalties; prosecutions; publication of regulations; excise tax; impoundment for outstanding violations.
 50-2201.04. Speeding and reckless driving.
 50-2201.04b. Operation of all-terrain vehicles and dirt bikes.
 50-2201.05. Fleeing from scene of accident; driving under the influence of liquor or drugs. [Repealed].
 50-2201.05a. Establishment of Ignition Interlock Device Program.
 50-2201.05b. Fleeing from a law enforcement officer in a motor vehicle.
 50-2201.05c. Leaving after colliding.
 50-2201.05d. Object falling or flying from vehicle.
 50-2201.07. Control over park system not affected by this part.

Part B

Miscellaneous

- 50-2201.28. Right-of-way at crosswalks.
 50-2201.31. Signs identifying the District as a strict enforcement zone.
 50-2201.32. Speed limit assessment.
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Subchapter II. Negligent Homicide

- 50-2203.01. Negligent homicide.

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- 50-2205.02. Evidence of intoxication. [Repealed].
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50-2206.55. Revocation of permit or privilege to drive.

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Subchapter V. Automated Traffic Enforcement

Part B

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50-2209.11. Automated enforcement expansion plan.

Subchapter I. General Provisions.

PART A.

TRAFFIC ACT, 1925.

§ 50-2201.02. Definitions.

For the purposes of this chapter, the term:

(1) "Alcohol" means a liquid, gas, or solid, containing ethanol from whatever source or by whatever processes produced, whether or not intended for human consumption.

(2) "All-terrain vehicle" or "ATV" means any motor vehicle with not less than 3 low-pressure tires, but not more than 6 low-pressure tires, designed primarily for off-road use and which has a seat or saddle designed to be straddled by the operator. The terms "all-terrain vehicle" and "ATV" shall not include golf carts, riding lawnmowers, or tractors.

(3) "Collision" means an impact between the operator's vehicle, or anything attached to or transported by the vehicle, and anything else, regardless of whether it is a person, a wild or domestic animal, real property, or personal property.

(4) "Commercial vehicle" means a vehicle used to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of greater than 26,000 pounds or a lesser rating as determined by federal regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) If the vehicle is designed to transport more than 15 passengers, including the driver;

(C) If the vehicle is a locomotive or a streetcar;

(D) If the vehicle is used to transport a material found to be hazardous by the Mayor in accordance with Chapter 14 of Title 8 [§ 8-1401 et seq.], or by the Secretary of Transportation in accordance with the Hazardous Materials Transportation Act, approved January 3, 1975 (88 Stat. 2156; 49 U.S.C. § 1801 et seq.); or

(E) If the vehicle is a vehicle for hire.

(5) "Court" means the Superior Court of the District of Columbia, except when used in the definition of "prior offense" when it shall also include courts of other jurisdictions.

(6) "Dirt bike" means any motorcycle designed primarily for off-road use.

(7) "Highway" means any street, road, or public thoroughfare, or the entire width between the boundary lines of every publicly or privately maintained way, when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

(8) "Identifying information" means the name, complete address, and telephone number of the operator of the vehicle; if the owner of the vehicle is different from the operator of the vehicle, the name, complete address, and telephone number of the owner of the vehicle operated; the tag number of the vehicle operated or, if no tag number, the vehicle identification number; and insurance information for the vehicle operated.

(9) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

(10) "Mayor" means the Mayor of the District of Columbia or his or her designee.

(11) "Motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined in paragraph (13) of this section, or a battery-operated wheelchair when operated by a person with a disability.

(12) "Park" means to leave any motor vehicle standing on a highway, whether or not attended.

(13) "Personal mobility device" or "PMD" means a motorized propulsion device designed to transport one person or a self-balancing, two non-tandem wheeled device, designed to transport only one person with an electric propulsion system, but does not include a battery-operated wheelchair.

(14) "Prior offense" means any guilty plea or verdict, including a finding of guilty in the case of a juvenile, for an offense under District law or a disposition in another jurisdiction for a substantially similar offense which occurred before the current offense regardless of when the arrest occurred. The term "prior offense" does not include an offense where the later of any term of incarceration, supervised release, parole, or probation ceased or expired more than 15 years prior to the arrest on the current offense.

(15) "This chapter" includes all lawful regulations issued thereunder by the Council of the District of Columbia and all lawful rules issued thereunder by the Mayor of the District of Columbia or his designated agent.

(16) "Traffic" includes not only motor vehicles but also all vehicles, pedestrians, and animals, of every description.

(17) "Vehicle" includes any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(18) "Vehicle conveyance fee" shall have the same meaning as provided in § 50-2301.02(9).

(19) "Vehicle for hire" means:

(A) Any motor vehicle operated in the District by a private concern or individual as an ambulance, funeral car, sightseeing vehicle, or for which the rate is fixed solely by the hour;

(B) Any motor vehicle operated in the District by a private concern used for services including transportation paid for by a hotel, venue, or other third party;

(C) Any motor vehicle used to provide transportation within the District between fixed termini or on a schedule, including vehicles operated by the Washington Metropolitan Area Transit Authority or other public authorities, not including rental cars; or

(D) Any other vehicle that provides transportation for a fee not operated on a schedule or between fixed termini and operating in the District, including taxicabs, limousines, party buses, and pedicabs.

(20) "Work zone" means the area of a highway or roadway that is affected by construction, maintenance, or utility work activities, including the area delineated by and within all traffic control devices erected or installed to guide vehicular, pedestrian, and bicycle traffic.

(Mar. 3, 1925, 43 Stat. 1119, ch. 443, § 2; July 3, 1926, 44 Stat. 812, ch. 739, § 1; Feb. 27, 1931, 46 Stat. 1424, ch. 317, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a); Apr. 26, 1977, D.C. Law 1-133, title II, § 201(a), 23 DCR 9697; Nov. 15, 1983, D.C. Law 5-42, § 2(a), 30 DCR 4999; Mar. 15, 1985, D.C. Law 5-176, § 12(a), 32 DCR 748; May 5, 1992, D.C. Law 9-96, § 4(a), 38 DCR 7274; Apr. 27, 2001, D.C. Law 13-289, § 401(a), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 10(a), 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, §§ 90(c), 94 to 97, 51 DCR 881; Apr. 5, 2005, D.C. Law 15-289, § 2(a), 52 DCR 1446; Mar. 6, 2007, D.C. Law 16-224, § 101(a), 53 DCR 10225; Jan. 23, 2008, D.C. Law 17-67, § 2(a), 54 DCR 11646; Mar. 20, 2009, D.C. Law 17-303, § 3(a), 55 DCR 12803; Sept. 26, 2012, D.C. Law 19-171, § 140, 59 DCR 6190; Apr. 27, 2013, D.C. Law 19-266, § 102(a), 59 DCR 12957.)

Section references. — This section is referenced in § 5-114.01, § 31-2402, § 50-601, § 50-1108, § 50-1201, § 50-1301.02, § 50-1331.01, § 50-1401.01, § 50-1501.01, § 50-1505.01, § 50-1901, § 50-2301.02, and § 50-2602.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 rewrote this section.

Legislative history of Law 19-266. — Law

19-266, the "Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-777. The Bill was adopted on first and second readings on July 10, 2012, and Sept. 19, 2012, respectively. Signed by the Mayor on Oct. 24, 2012, it was assigned Act No. 19-489 and transmitted to Congress for its review. D.C. Law 19-266 became effective on Apr. 27, 2013.

§ 50-2201.03. Mayor to make rules; Department of Transportation; Director; Congressional and Council parking; title fees; common carriers; penalties; prosecutions; publication of regulations; excise tax; impoundment for outstanding violations.

(a) The Mayor is authorized and empowered to make, modify, repeal, and enforce rules relating to and concerning the following:

(1) The control of traffic and the movement of traffic;

(2)(A) The length, weight, height, and width of vehicles; and

(B) The brakes, horns, lights, mufflers, and other equipment of vehicles and the inspection of same;

(3)(A) The registration and reregistration of vehicles;

(B) The titling and retitling of motor vehicles and trailers, and the transfer of titles to motor vehicles and trailers; and

(C) The revocation, suspension, restoration, and reinstatement of the registration for motor vehicles and trailers and of certificates of title to motor vehicles and trailers;

(4) The issuance, suspension, revocation, restoration, and reinstatement of operator's permits and operating privileges; provided, that the fee for restoration or reinstatement shall be \$98;

(5) The establishment and location of hack stands; and

(6) The speed, routing, and parking of vehicles; provided, that the Mayor shall establish and locate parking areas in the vicinity of government establishments for use only by members of Congress and governmental officials when on official business.

(b) There is established in the government of the District of Columbia a Department of Transportation, which under the direction of the Mayor, shall have charge of the issuance and revocation of operators' permits, the registration and titling of motor vehicles, the making of traffic studies and plans, the establishment and designation of arterial and other public highways, providing for the equipment of any street, road, or highway with control lights or other devices, or both, for the regulation of traffic, the installation and maintenance of traffic signs, signals, and markers, and of such other matters as may be determined by the Mayor. The Mayor shall appoint a Director of Vehicles and Traffic, who shall be in charge of said Department, and such other personnel as he or she may deem necessary to perform the duties thereof and as may be appropriated for by Congress. The Director of Vehicles and Traffic shall be responsible directly to the Mayor for the faithful performance of his or her duties and shall be subject to removal by the Mayor for cause.

(c) Members of Congress or the Council may park their vehicles in any available curb space in the District of Columbia, when:

(1) The vehicle is used by the member of Congress or the Council on official business;

(2) The vehicle is displaying a Congressional or Council registration tag issued by the jurisdiction represented by the member; and

(3) The vehicle is not parked in violation of a loading zone, rush hour, firehouse, or fire plug limitation.

(d) The Mayor shall cause to be levied, collected, and paid a \$26 fee for each titling, duplicate titling, and retitling, and he or she shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the Mayor and be granted an official certificate of title for such vehicle. No registration or titling fee shall be charged for vehicles owned by the District government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or

§ 50-2201.03 MOTOR AND NON-MOTOR VEHICLES AND TRAFFIC

permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his or her name for any vehicle not in fact owned by him or her, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than one year, or both. If the properly designated agent of the Mayor shall determine that an applicant for a certificate of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the Mayor by the individual affected, such individual shall be entitled to proceed further as provided under § 50-1403.01(a); provided, that reasonable time for hearing be given the applicant in the first instance.

(e) As to all common carriers by vehicle which enter, operate in, or leave the District of Columbia, the power to route small vehicles within the District of Columbia, to regulate their equipment other than that specifically named elsewhere in this part, to regulate their schedules and their loading and unloading, to locate their stops and all platforms and loading zones, and to require the appropriate marking thereof is vested in the Public Service Commission of the District of Columbia.

(f) Except as otherwise provided in this part or in the District of Columbia Traffic Adjudication Act of 1978 (§ 50-2301.01 et seq.), any person violating any provision of this part or any rule promulgated hereunder shall, upon conviction thereof, be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both. Prosecution for violations shall be in the Superior Court of the District of Columbia upon information or indictment filed by the Corporation Counsel of the District of Columbia or any of his or her assistants.

(g) All regulations promulgated under the authority of this part shall be published in accordance with the requirements of subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.].

(h) Repealed.

(i) Repealed.

(j)(1) In addition to the fees and charges levied under other provisions of this part, there is levied and imposed an excise tax on the issuance of every original certificate of title for a motor vehicle or trailer in the District of Columbia and every subsequent certificate of title issued in the District of Columbia in the case of a sale, resale, or gift, except in the case of a bona fide gift of a vehicle already titled in the District given between spouses, parent and child, or domestic partners, as that term is defined in § 32-701(3), or other transfer at the following percentage of the fair market value of the motor vehicle or trailer at the time the certificate of title is issued:

Weight Class	Registration Fee
Class I (3,499 pounds or less)	6%
Class II (3,500 — 4,999 pounds)	7%
Class III (5,000 pounds or greater)	8%.

(2) For the purpose of this section, the Mayor or his or her duly authorized representative shall determine the fair market value of a motor vehicle or trailer. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he or she deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued.

(3) The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(A) Motor vehicles and trailers owned by the United States or the District of Columbia;

(B) Repealed;

(C) Repealed;

(D) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service; provided, that the receipts from furnishing such commodity or service are subject to a gross receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(E) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than 60 days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, then the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Mayor or his or her designated agent is authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle.

(F) Rental or leased motor vehicles or trailers; provided, that the rental or leasing of such vehicles is subject to the gross receipts tax described in § 47-2002(3)(C).

(G) Taxis or taxicabs as defined in § 50-303(8).

(H) Motor vehicles and trailers registered or titled in another state or United States jurisdiction by a nonresident before the nonresident established or maintained residency in the District.

(I) Commercial vehicles having the characteristics specified [in] § 47-2352(c) that are owned or leased by a company with an established place of business (as defined in § 47-2302(13)) located within the District of Columbia, if such vehicles are used to furnish a commodity or service; provided, that, the receipts from furnishing such commodity or service are subject to a gross receipts or mileage tax in force in the District of Columbia at the time a certificate of title is issued for the vehicle.

(J) Motor vehicles, excluding motorcycles and motor-driven cycles, with an estimated average miles per gallon ("MPG") for city driving at or above 40 MPG, as determined in accordance with 40 CFR § 600.001-08, and published in the Fuel Economy Guide by the United States Environmental Protection Agency and the United States Department of Energy or other alternative fueled vehicles as determined by the Department of Motor Vehicles through rulemaking.

(K) Motor vehicles following the death of one co-owner; provided, that the title is issued to a surviving owner.

(L) Motor vehicles whose ownership is determined by a decree of divorce or separation or pursuant to a written instrument incident to such divorce or separation; or, in the case of former domestic partners, ownership is either determined by a court order or one co-owner transfers his or her interest to the other co-owner provided that the applicant also submits the termination statement provided for in § 32-702(d)(1); and

(M) Motor vehicles re-titled by an insurance company in connection with an insurance claim or pursuant to Chapter 13A of this title.

(N) Any vehicle for which the certificate of title issued is a scrap title issued pursuant to § 50-2705.

(O) Repealed.

(P) Vehicles for which a District of Columbia title is being issued to the lienholder because of repossession or was re-issued to the owner after repossession.

(Q) Vehicles designated as non-repairable or salvage pursuant to Chapter 13A of this title [§ 50-1331.01 et seq.].

(k)(1) Any unattended motor vehicle found parked at any time upon any public highway of the District of Columbia against which there are 2 or more unpaid notices of infraction or vehicle conveyance fees that the owner was deemed to have admitted or that were sustained after a hearing, pursuant to § 50-2303.05, § 50-2303.06, or § 50-2209.02, or against which there have been issued 2 or more warrants may, by or under the direction of a law enforcement officer or member of the Metropolitan Police force or the United States Park Police force or an employee of the District of Columbia Department of Transportation, either by towing or otherwise, be removed or conveyed to and impounded in any place designated by the Mayor or immobilized in such manner as to prevent its operation; except, that no such vehicle shall be immobilized by any means other than by the use of a device or other mechanism which will cause no damage to such vehicle unless it is moved while such device or mechanism is in place.

(2) The notice, reclamation, and disposition procedures set forth in §§ 50-2421.06 through 50-2421.10, shall apply to any vehicle impounded pursuant to this section. In any case involving immobilization of a vehicle pursuant to this subsection, such member or law enforcement officer or employee shall cause to be placed on such vehicle, in a conspicuous manner, notice sufficient to warn any individual to the effect that such vehicle has been immobilized and that any attempt to move such vehicle might result in damage to such vehicle.

(3) Repealed.

(4) The owner of an immobilized vehicle shall be subject to a booting fee of \$75 for such immobilization.

(l) The Director of the Department of Motor Vehicles may establish a fee discount of up to 10% on any service obtained through the telephone, Internet, mail, or other method that does not involve an in-person visit to the Department. This subsection shall not apply to the payment of the motor vehicle title tax.

(Mar. 3, 1925, 43 Stat. 1121, ch. 443, § 6; July 3, 1926, 44 Stat. 814, ch. 739, § 4; Feb. 27, 1931, 46 Stat. 1424, ch. 317, §§ 3, 4; Dec. 19, 1932, 47 Stat. 750, ch. 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 2, 1945, 59 Stat. 313, ch. 222; May 27, 1949, 63 Stat. 128, title III, ch. 146, § 301; Oct. 28, 1949, 63 Stat. 972, title XI, ch. 782, § 1106(a); July 24, 1956, 70 Stat. 633, ch. 695, § 1; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85-273, § 3; Oct. 3, 1962, 76 Stat. 742, Pub. L. 87-745, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88-503, § 21; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89-610, title II, § 201; 1967 Reorg. Plan No. 3, 81 Stat. 980, § 503(c); Dec. 4, 1967, 81 Stat. 532, Pub. L. 90-172, § 1; Oct. 31, 1969, 83 Stat. 172, 174, Pub. L. 91-106, titles II, IV, §§ 201, 404; Dec. 12, 1969, 83 Stat. 343, Pub. L. 91-145, § 101; July 29, 1970, 84 Stat. 570, 583, Pub. L. 91-358, title I, §§ 155(a), 163(g)(2); Dec. 15, 1971, 85 Stat. 657, Pub. L. 92-196, title VII, § 705; Oct. 21, 1972, 86 Stat. 1015, Pub. L. 92-518, title III, § 301(a); Nov. 1, 1973, 87 Stat. 531, Pub. L. 93-145, § 101; Oct. 21, 1975, D.C. Law 1-23, title I, § 102, 22 DCR 2094; Jan. 22, 1976, D.C. Law 1-42, § 7(b), 22 DCR 6317; June 15, 1976, D.C. Law 1-70, title II, § 201, 23 DCR 536; Apr. 19, 1977, D.C. Law 1-124, title I, § 102, 23 DCR 8749; Apr. 26, 1977, D.C. Law 1-133, title IV, § 402, 23 DCR 9697; Sept. 12, 1978, D.C. Law 2-104, §§ 501, 601, 25 DCR 1275; Mar. 3, 1979, D.C. Law 2-139, § 3205(l), 25 DCR 5740; Mar. 6, 1979, D.C. Law 2-157, § 5, 25 DCR 6995; Apr. 3, 1982, D.C. Law 4-97, § 5, 29 DCR 765; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; June 22, 1983, D.C. Law 5-14, §§ 803, 804, 30 DCR 2632; Nov. 15, 1983, D.C. Law 5-42, § 2(b), 30 DCR 4999; May 1, 1990, D.C. Law 8-103, § 2, 37 DCR 1615; Sept. 26, 1990, D.C. Law 8-170, § 2, 37 DCR 4839; Aug. 17, 1991, D.C. Law 9-30, § 4(a), 38 DCR 4215; May 5, 1992, D.C. Law 9-96, § 4(b), 38 DCR 7274; Mar. 26, 1999, D.C. Law 12-175, § 802, 45 DCR 7193; April 5, 2000, D.C. Law 13-80, § 2, 46 DCR 10463; Oct. 19, 2002, D.C. Law 14-213, § 34, 49 DCR 8140; June 5, 2003, D.C. Law 14-307, § 1706(a), 49 DCR 11664; Oct. 28, 2003, D.C. Law 15-35, § 13(b), 50 DCR 6579; Mar. 16, 2005, D.C. Law 15-239, § 2(a), 51 DCR 9600; Apr. 8, 2005, D.C. Law 15-307, § 402, 52 DCR 1700; Oct. 20, 2005, D.C. Law 16-33, § 6002, 52 DCR 7503; June 16, 2006, D.C. Law 16-129, § 2, 53 DCR 4716; June 22, 2006, D.C. Law 16-139, § 10, 53 DCR 3682; Mar. 2, 2007, D.C. Law 16-191, § 89, 53 DCR 6794; Mar. 14, 2007, D.C. Law 16-279, §§ 202(a), 401(a), 54 DCR 903; Aug. 16, 2008, D.C. Law 17-219, § 6006, 55 DCR 7598; Sept. 12, 2008, D.C. Law 17-231, § 42, 55 DCR 6758; Mar. 20, 2009, D.C. Law 17-303, § 3(b), 55 DCR 12803; Apr. 23, 2013, D.C. Law 19-272, § 2, 60 DCR 1729; Apr. 27, 2013, D.C. Law 19-266, § 102(b), 59 DCR

12957; Apr. 27, 2013, D.C. Law 19-290, § 5(a), 60 DCR 2343; June 11, 2013, D.C. Law 19-317, § 271(a), 60 DCR 2064.)

Section references. — This section is referenced in § 1-636.02, § 9-1103.04, § 9-1111.15, § 34-731, § 47-2831, § 50-2201.22, § 50-2201.25, § 50-2201.27, and § 50-2421.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted “\$2,500” for “\$1,000” in (d); substituted “\$500” for “\$300” in (f); substituted “a law enforcement officer” for “an officer” in (k)(1); substituted “law enforcement officer” for “officer” in (k)(2); made gender-neutral changes throughout the section; and made stylistic changes.

The 2013 amendment by D.C. Law 19-272 rewrote (j)(1) and (j)(3)(H).

The 2013 amendment by D.C. Law 19-290 substituted “motor-driven cycles” for “motorized bicycles” in (j)(3)(J).

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000 [\$2,500]” in (d), and for “not more than \$300 [\$500]” in (f).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-272. — Law 19-272, the “Excise Tax Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-959. The Bill was adopted on first

and second readings on Dec. 4, 2012, and Dec 18, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-634 and transmitted to Congress for its review. D.C. Law 19-272 became effective on April 23, 2013.

Legislative history of Law 19-290. — Law 19-290, the “Motorized Bicycle Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-995. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 29, 2013, it was assigned Act No. 19-658 and transmitted to Congress for its review. D.C. Law 19-290 became effective on April 27, 2013.

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.04. Speeding and reckless driving.

(a) No vehicle shall be operated at a greater rate of speed than permitted by the regulations adopted under the authority of this part.

(b) A person shall be guilty of reckless driving if the person drives a vehicle upon a highway carelessly and heedlessly in willful or wanton disregard for the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger a person or property.

(b-1) A person shall be guilty of aggravated reckless driving if the person violates subsection (b) of this section and the person does one or more of the following:

(1) Operates the vehicle at a rate or speed at or greater than 30 miles per hour over the stated speed limit;

(2) Causes bodily harm or permanent disability or disfigurement to another; or

(3) Causes property damage in excess of \$1,000.

(c)(1) A person violating subsection (b) of this section shall, upon conviction for the first offense, be fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than 90 days, or both.

(2) A person violating subsection (b) of this section when the person has been convicted of a prior offense under subsection (b) of this section within a

2-year period and is being sentenced on the current offense shall be fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than 180 days.

(3) A person violating subsection (b) of this section when the person has 2 or more prior convictions for offenses under subsection (b) of this section within a 2-year period and is being sentenced on the current offense shall be fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than one year.

(c-1)(1) A person violating subsection (b-1) of this section shall, upon conviction for the first offense, be fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than 180 days, or both.

(2) A person violating subsection (b-1) of this section when the person has one or more prior convictions for offenses under subsection (b-1) within a 2-year period and is being sentenced on the current offense shall be fined no more than the amount set forth in § 22-3571.01, or incarcerated for no more than one year.

(d) Any individual violating any provision of this section, except where the offense constitutes aggravated reckless driving, shall be subject to a civil fine under the District of Columbia Traffic Adjudication Act (§ 50-2301.01 et seq.).

(e) A presumption shall exist that a reckless, careless, hazardous, or aggressive driving conviction that occurred in a foreign jurisdiction constitutes reckless driving as provided in subsection (b) of this section, unless the District can show evidence that the person met the requirements for aggravated reckless driving in subsection (b-1) of this section.

(f) The fines set forth in this section shall not be limited by § 22-3571.01.

(Mar. 3, 1925, 43 Stat. 1123, ch. 443, § 9; July 3, 1926, 44 Stat. 814, ch. 739, § 5; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; June 24, 1936, 49 Stat. 1901, ch. 749; Nov. 25, 1942, 56 Stat. 1023, ch. 642, § 1; Sept. 12, 1978, D.C. Law 2-104, § 601, 25 DCR 1275; Sept. 14, 1982, D.C. Law 4-145, § 7, 29 DCR 3138; Apr. 5, 2005, D.C. Law 15-289, § 2(c), 52 DCR 1446; Apr. 27, 2013, D.C. Law 19-266, § 102(c), 59 DCR 12957; June 8, 2013, D.C. Law 19-316, § 2, 60 DCR 1713; June 11, 2013, D.C. Law 19-317, § 113(e), 60 DCR 2064.)

Section references. — This section is referenced in § 4-501, § 23-581, § 50-329.05, § 50-2201.05b, § 50-2201.27, and § 50-2302.02.

Effect of amendments.

The 2013 amendment by D.C. Law 19-266 substituted "\$2,500" for "\$1,000" in (c).

The 2013 amendment by D.C. Law 19-316 rewrote (b) and (c); added (b-1) and (c-1); substituted "aggravated reckless driving" for "reckless driving" in (d); and added (e).

The 2013 amendment by D.C. Law 19-317 added the subsection designated herein as (f).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-316. — Law 19-316, the "Reckless Driving Amendment Act

of 2012," was introduced in Council and assigned Bill No. 19-823. The Bill was adopted on first and second readings on Nov. 1, 2012, and Nov 15, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-630 and transmitted to Congress for its review. D.C. Law 19-316 became effective on June 8, 2013.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes.

Section 8 of D.C. Law 19-316 provided that the act shall apply as of June 1, 2013.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.04b. Operation of all-terrain vehicles and dirt bikes.

(a) No person shall operate at any time an all-terrain vehicle or dirt bike on public property including any public space in the District.

(b) All-terrain vehicles or dirt bikes shall not be registered with the Department of Motor Vehicles.

(c) Any individual violating any provision of this section shall upon conviction be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 30 days, or both. All such prosecutions shall be in the Superior Court of the District of Columbia upon information filed by the Attorney General of the District of Columbia or any of his assistants in the name of the District of Columbia.

(Mar. 3, 1925, ch. 443, § 9b, as added Apr. 5, 2005, D.C. Law 15-289, § 2(d), 52 DCR 1446; Apr. 27, 2013, D.C. Law 19-266, § 102(d), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 271(b), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 substituted “\$250” for “\$1,000” in (c).

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1000 [\$250]” in (c).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.05. Fleeing from scene of accident; driving under the influence of liquor or drugs. [Repealed].

Repealed.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10; Feb. 27, 1931, 46 Stat. 1427, ch. 317, § 4; Dec. 15, 1944, 58 Stat. 805, ch. 588; Aug. 16, 1954, 68 Stat. 732, ch. 741, §§ 7, 8; Aug. 5, 1981, D.C. Law 4-29, § 604(b)(1), 28 DCR 3081; Sept. 14, 1982, D.C. Law 4-145, §§ 5, 7, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, §§ 10, 11, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 4(c), 38 DCR 7274; Feb. 5, 1994, D.C. Law 10-68, § 32, 40 DCR 6311; May 24, 1994, D.C. Law 10-122, § 3, 41 DCR 1658; Apr. 13, 1999, D.C. Law 12-212, § 2(a), 46 DCR 5; Apr. 3, 2001, D.C. Law 13-238, § 2(a), 48 DCR 602; Oct. 16, 2006, 120 Stat. 2042, Pub. L. 109-356, § 307; Mar. 2, 2007, D.C. Law 16-195, § 8, 53 DCR 8675; Apr. 24, 2007, D.C. Law 16-306, § 228(a), 53 DCR 8610; Mar. 25, 2009, D.C. Law 17-353, § 141, 56 DCR 1117; Dec. 10, 2009, D.C. Law 18-88, § 228, 56 DCR 7413; Sept. 14, 2011, D.C. Law 19-21, § 9002, 58 DCR 6226; Apr. 27, 2013, D.C. Law 19-266, § 102(e), 59 DCR 12957.)

Section references. — This section is referenced in § 1-620.24, § 4-501, § 4-516, § 7-2502.03, § 16-801, § 23-581, § 50-2201.27, and § 50-2302.02.

Legislative history of Law 19-266. — See note to § 50-2201.02.

CASE NOTES

Weight and sufficiency of evidence.

Sufficient evidence supported defendant's conviction for fleeing from the scene of an accident after causing personal injury under D.C. Code § 50-2201.05(a)(1) where: (1) a police officer testified that the blow from the van felt like a real hard hit in football; (2) there was sufficient evidence that the driver knew he had

hit the officer; (3) the driver injured the officer (however slightly), and did not stop to assist him; (4) the officer was able to identify the driver from a photo array the next day; and (5) two weeks later, the officer positively identified defendant at the scene of his arrest pursuant to the warrant. *Fadero v. United States*, 59 A.3d 1239, 2013 D.C. App. LEXIS 27 (2013).

§ 50-2201.05a. Establishment of Ignition Interlock Device Program.

(a) Within 180 days of April 20, 2013, the Mayor shall establish an Ignition Interlock Device Program applicable to persons who have been convicted of an offense pursuant to § 50-2206.11, § 50-2206.12, or § 50-2206.14, note, or any succeeding emergency act establishing those sections in substantially similar language, or pursuant to § 50-2206.11, § 50-2206.12 or § 50-2206.14, or whose operator's permit has been revoked pursuant to § 50-1403.01(a) for driving while the person's alcohol concentration is 0.08 grams or more either per 100 milliliters of blood or per 210 liters of breath or is 0.10 grams or more per 100 milliliters of urine, or while under the influence of intoxicating liquor or any drug or any combination thereof, or while the ability to operate a vehicle is impaired by the consumption of intoxicating liquor.

(b) For the purpose of this section, "Ignition Interlock Device" means ignition equipment designed to prevent a motor vehicle from being operated by a person whose blood alcohol level exceeds the calibrated setting on the device.

(c) The Mayor shall adopt rules to implement the provisions of this section.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10a, as added Apr. 3, 2001, D.C. Law 13-238, § 2(b), 48 DCR 602; Apr. 20, 2013, D.C. Law 19-258, § 2, 60 DCR 1080.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-258 rewrote (a).

Legislative history of Law 19-258. — Law 19-258, the "Ignition Interlock Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-673. The Bill was adopted on

first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 9, 2013, it was assigned Act No. 19-610 and transmitted to Congress for its review. D.C. Law 19-258 became effective on Apr. 20, 2013.

§ 50-2201.05b. Fleeing from a law enforcement officer in a motor vehicle.

(a) For the purposes of this section, the term:

(1) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

(2) "Signal" means a communication made by hand, voice, or the use of emergency lights, sirens, or other visual or aural devices.

(b)(1) An operator of a motor vehicle who knowingly fails or refuses to bring the motor vehicle to an immediate stop, or who flees or attempts to elude a law

enforcement officer, following a law enforcement officer's signal to bring the motor vehicle to a stop, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 180 days, or both.

(2) An operator of a motor vehicle who violates paragraph (1) of this subsection and while doing so drives the motor vehicle in a manner that would constitute reckless driving under § 50-2201.04(b), or causes property damage or bodily injury, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 5 years, or both.

(c) It is an affirmative defense under this section if the defendant can show, by a preponderance of the evidence, that the failure to stop immediately was based upon a reasonable belief that the defendant's personal safety is at risk. In determining whether the defendant has met this burden, the court may consider the following factors:

(1) The time and location of the event;

(2) Whether the law enforcement officer was in a vehicle clearly identifiable by its markings, or if unmarked, was occupied by a law enforcement officer in uniform or displaying a badge or other sign of authority;

(3) The defendant's conduct while being followed by the law enforcement officer;

(4) Whether the defendant stopped at the first available reasonably lighted or populated area; and

(5) Any other factor the court considers relevant.

(d)(1) The Mayor or his designee, pursuant to § 50-1403.01, may suspend the operating permit of a person convicted under subsection (b)(1) of this section for a period of not more than 180 days and may suspend the operating permit of a person convicted under subsection (b)(2) of this section for a period of not more than 1 year.

(2) A suspension of an operator's permit under paragraph (1) of this subsection for a person who has been sentenced to a term of imprisonment for a violation of subsection (b)(1) or (2) of this section shall begin following the person's release from incarceration.

(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.

(Mar. 3, 1925, ch. 443, § 10b, as added Mar. 16, 2005, D.C. Law 15-239, § 2(b), 51 DCR 9600; Apr. 27, 2013, D.C. Law 19-266, § 102(f), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 271(c), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 substituted "\$12,500" for "\$5,000" in (b)(2).

The 2013 amendment by D.C. Law 19-317 substituted "not more than the amount set forth in § 22-3571.01" for "not more than \$1,000" in (b)(1), and for "not more than \$5,000 [\$12,500]" in (b)(2).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.05c. Leaving after colliding.

(a) Any person who operates or who is in physical control of a vehicle within the District who knows or has reason to believe that his or her vehicle has been in a collision shall immediately stop and:

(1) Where another person is injured, call or cause another to call 911 or call or cause another to call for an ambulance or other emergency assistance if necessary, remain on the scene until law enforcement arrives, and provide identifying information to law enforcement and to the injured person;

(2) Where real or personal property belonging to another is damaged or a domestic animal is injured, provide identifying information to the owner or operator of the property or the owner of the domestic animal or, where the owner or operator of the property or the owner of the domestic animal is not present, provide or cause another to provide identifying information and the location of the collision, to law enforcement or 911; or

(3) Where real or personal property or a wild or domestic animal, as a result of the collision, poses a risk to others, call or cause another to call 911 and provide identifying information, the location of the collision, and a description of the nature of the risk posed to others.

(b) It is an affirmative defense to a violation of subsection (a) of this section, which the defendant must show by a preponderance of the evidence, that the defendant's failure to stop or his or her failure to remain on the scene was based on a reasonable belief that his or her personal safety, or the safety of another, was at risk and that he or she called 911, or otherwise notified law enforcement, as soon as it was safe to do so, provided identifying information, provided a description of the collision, including the location of the collision or event, and followed the instructions of the 911 operator or a law enforcement officer.

(c) It is not a defense to a violation of this section that the defendant:

(1) Was intoxicated, impaired in any way, or distracted; or

(2) Was not at fault for the collision.

(d)(1)(A) A person violating subsection (a)(1) of this section shall upon conviction for the first offense be fined not more than the amount set forth in § 22-3571.01, or incarcerated for not more than 180 days, or both.

(B) A person violating subsection (a)(1) of this section when the person has a prior offense under subsection (a)(1) of this section and is being sentenced on the current offense shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than one year, or both.

(2)(A) A person violating subsection (a)(2) or (a)(3) of this section shall upon conviction for the first offense be fined not more than the amount set forth in § 22-3571.01, or incarcerated for not more than 30 days, or both.

(B) A person violating subsection (a)(2) or (3) of this section when the person has a prior offense under subsection (a)(2) or (a)(3) of this section and is being sentenced on the current offense shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 90 days, or both.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10c, as added Apr. 27, 2013, D.C. Law 19-266, § 102(g), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 271(d), 59 DCR 12957.)

Section references. — This section is referenced in § 50-2206.55.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$1,000” in (d)(1)(A), for “not more than \$2,500” in (d)(1)(B), for “not more than \$250” in

(d)(2)(A), and for “not more than \$500” in (d)(2)(B).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.05d. Object falling or flying from vehicle.

(a) Any person who operates or who is in physical control of a vehicle within the District who knows or has reason to believe that an object likely to cause damage has detached from, fallen, or flown from his or her vehicle shall immediately stop and:

(1) Where another person is injured, call or cause another to call 911 or call or cause another to call for an ambulance or other emergency assistance if necessary, remain on the scene until law enforcement arrives, and provide identifying information to law enforcement and to the injured person;

(2) Where real or personal property belonging to another is damaged or a domestic animal is injured, provide identifying information to the owner or operator of the property or the owner of the domestic animal or, where the owner or operator of the property or the owner of the domestic animal is not present, provide or cause another to provide identifying information and the location of the event, to law enforcement or 911; or

(3) Where real or personal property or a wild or domestic animal, as a result of the event, poses a risk to others, call or cause another to call 911 and provide identifying information, the location of the collision, and a description of the nature of the risk posed to others.

(b) It is an affirmative defense to a violation of subsection (a) of this section, which the defendant must show by a preponderance of the evidence, that the defendant’s failure to stop or his or her failure to remain on the scene was based on a reasonable belief that his or her personal safety, or the safety of another, was at risk and that he or she called 911, or otherwise notified law enforcement, as soon as it was safe to do so, provided identifying information, provided a description of the event, including the location of the event, and followed the instructions of the 911 operator or a law enforcement officer.

(c) It is not a defense to a violation of this section that the defendant:

(1) Was intoxicated, impaired in any way, or distracted; or

(2) Was not at fault for the object falling from or flying from the vehicle.

(d)(1) A person violating any provision of subsection (a) of this section shall upon conviction for the first offense be fined not more than the amount set forth in § 22-3571.01, or incarcerated for not more than 60 days, or both.

(2) A person violating any provision of subsection (a) of this section when the person has a prior offense under subsection (a) of this section and is being

sentenced on the current offense shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 90 days, or both.

(Mar. 3, 1925, 43 Stat. 1124, ch. 443, § 10d, as added Apr. 27, 2013, D.C. Law 19-266, § 102(g), 59 DCR 12957.)

Section references. — This section is referenced in § 50-2206.55.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (d)(1) and (d)(2).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2201.07. Control over park system not affected by this part.

Nothing contained in this part shall be construed to interfere with the exclusive charge and control prior to March 3, 1925, committed to the Director of the National Park Service over the park system of the District, and he or she is hereby authorized and empowered to make and enforce all regulations for the control of vehicles and traffic, and limiting the speed thereof on roads, highways, and bridges within the public grounds in the District, under his or her control, subject to the penalties prescribed in this part.

(Mar. 3, 1925, 43 Stat. 1126, ch. 443, § 16(b); July 3, 1926, 44 Stat. 835, ch. 760, § 3; Apr. 27, 2013, D.C. Law 19-266, § 102(h), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 substituted “he and she” and “his or her” for “he” and “his,” respectively.

Legislative history of Law 19-266. — See note to § 50-2201.02.

PART B.

MISCELLANEOUS.

§ 50-2201.28. Right-of-way at crosswalks.

(a) The driver of a vehicle shall stop and remain stopped to allow a pedestrian to cross the roadway within any marked crosswalk, or unmarked crosswalk at an intersection, when the pedestrian is upon the lane, or within one lane approaching the lane, on which the vehicle is traveling or onto which it is turning.

(a-1) Whenever a vehicle is stopped at a marked crosswalk at an unsignalized intersection, a vehicle approaching the crosswalk in an adjacent lane or from behind the stopped vehicle shall stop and give the right-of-way to ensure the safety of pedestrians and bicyclists before passing the stopped vehicle.

(b) A pedestrian who has begun crossing on the “WALK” signal shall be given the right-of-way by the driver of any vehicle to continue to the opposite sidewalk or safety island, whichever is nearest.

(b-1) A person on a bicycle or operating a personal mobility device upon or along a sidewalk or while crossing a roadway in a crosswalk shall have the rights and duties applicable to a pedestrian under the same circumstances; provided, that:

(1) The bicyclist or personal mobility device operator yields to pedestrians on the sidewalk or crosswalk; and

(2) Riding a bicycle on the sidewalk is permitted.

(c) Any person convicted of failure to stop and give the right-of-way to a pedestrian or of colliding with a pedestrian shall be subject to a fine of not more than the amount set forth in § 22-3571.01, or imprisonment for not more than 30 days, or both. Any person convicted of a violation of this section may be sentenced to perform community service as an alternative to, but not in addition to, any term of imprisonment authorized by this section.

(c-1) Civil fines, penalties, and fees may be imposed by the Department of Motor Vehicles as alternative sanctions for any infraction of the provisions of this section, or rules or regulations issued under the authority of this section, pursuant to Chapter 23 of this title [§ 50-2301.01 et seq.]. Adjudication of any infraction shall be pursuant to Chapter 23 of this title [§ 50-2301.01 et seq.].

(d) The Mayor of the District of Columbia (“Mayor”) shall submit to the Council of the District of Columbia (“Council”) a proposed plan for an extensive public information program on the rights and responsibilities of pedestrians and drivers. This proposed plan shall include proposals for increasing police enforcement of pedestrian right-of-way laws. The proposed plan shall be submitted to the Council within 90 days of October 9, 1987, for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed plan, in whole or in part, by resolution within this 45-day review period, the proposed plan shall be deemed approved.

(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.

(Oct. 9, 1987, D.C. Law 7-34, § 2, 34 DCR 5316; Mar. 16, 2005, D.C. Law 15-224, § 2, 51 DCR 10533; Mar. 2, 2007, D.C. Law 16-191, § 114, 53 DCR 6794; Nov. 25, 2008, D.C. Law 17-269, § 2, 55 DCR 11015; Dec. 2, 2011, D.C. Law 19-49, § 2, 58 DCR 8945; Mar. 5, 2013, D.C. Law 19-206, § 2, 59 DCR 12505; June 11, 2013, D.C. Law 19-317, § 273, 60 DCR 2064; May 1, 2013, D.C. Law 19-307, § 201, 60 DCR 2753.)

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “of not more than \$500” in (c).

The 2013 amendment by D.C. Law 19-307

rewrote (a), which read: “When official traffic-control signals are not in place or not in operation, the driver of a vehicle shall stop and give the right-of-way to a pedestrian crossing the roadway within any marked crosswalk or unmarked crosswalk at an intersection.”

Legislative history of Law 19-317. — See note to § 50-2201.03.

Legislative history of Law 19-307. — See note to § 50-2201.31.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 pro-

vided that the act shall apply only to offenses committed on or after June 11, 2013.

Applicability of D.C. Law 19-307: Section 401(a) of D.C. Law 19-307 provided that the 2013 amendment to this section shall apply as of May 1, 2013.

§ 50-2201.31. Signs identifying the District as a strict enforcement zone.

Within 180 days of May 1, 2013, the Mayor shall post signs identifying the entire District as a strict traffic enforcement zone and warning that automated cameras are used to enforce a wide range of moving violations. The signs shall be posted throughout the District, in locations as determined by the Mayor to be necessary or appropriate.

(May 1, 2013, D.C. Law 19-307, § 102, 60 DCR 2753.)

Legislative history of Law 19-307. — Law 19-307, the "Safety-Based Traffic Enforcement Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-1013. The Bill was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Enacted without signature of the Mayor on February 5, 2013, it was assigned Act

No. 19-674 and transmitted to Congress for its review. D.C. Law 19-307 became effective on May 1, 2013.

Editor's notes. — Applicability of D.C. Law 19-307: Section 401(a) of D.C. Law 19-307 provided that this section shall apply as of May 1, 2013.

§ 50-2201.32. Speed limit assessment.

(a) By November 1, 2013, the Mayor shall complete a District-wide assessment that evaluates the speed limits on the District's arterials and other streets. The report of the assessment shall include the criteria used for assessing the speed limits. Upon its completion, the assessment shall be posted to the District Department of Transportation's website. The assessment shall identify a list of recommended speed limits for all District streets based on each of the following independent approaches:

(1) Utilize factors common among transportation officials for the determination of speed limit;

(2) Use factors based on safety and mobility needs of pedestrians, bicyclists, transit drivers and all other potential road users, as well as factors based on input from local neighborhood representatives and organizations that promote road safety including Advisory Neighborhood Commissions, the Pedestrian Advisory Council, and the Bicycle Advisory Council;

(3) Evaluate whether comparable arterials should have comparable speed limits, and similarly do so for other streets; and

(4) Include, based solely on an engineering perspective, speed limits for the District's arterials and other streets.

(b) By January 1, 2014, the Mayor shall revise, through rulemaking, existing speed limits throughout the District, as appropriate. Notwithstanding this requirement, the Mayor shall not cause an anti-deficiency as determined by a fiscal impact statement obtained by the Mayor from the Chief Financial Officer.

(May 1, 2013, D.C. Law 19-307, § 104, 60 DCR 2753.)

Section references. — This section is referenced in § 50-2201.33.

Legislative history of Law 19-307. — See note to § 50-2201.31.

Editor's notes. — Applicability of D.C. Law 19-307: Section 401(a) of D.C. Law 19-307 provided that this section shall apply as of May 1, 2013.

§ 50-2201.33. Emergency speed-limit changes.

(a) Notwithstanding § 2-505(c), the Mayor may not adopt an order, regulation, or rule concerning posted speed limits through emergency-rulemaking.

(b) Notwithstanding any other provision of law, any order, regulation, or rule adopted through emergency rulemaking concerning posted speed limits after December 15, 2012, is repealed.

(c) This section shall expire on December 31, 2013, or within 45 days after the District Department of Transportation posts the District-wide assessment required by § 50-2201.32, whichever is earlier.

(May 1, 2013, D.C. Law 19-307, § 105, 60 DCR 2753.)

Legislative history of Law 19-307. — See note to § 50-2201.31.

19-307: Section 401(a) of D.C. Law 19-307 provided that this section shall apply as of May 1, 2013.

Editor's notes. — Applicability of D.C. Law

2013.

Subchapter II. Negligent Homicide.

§ 50-2203.01. Negligent homicide.

Any person who, by the operation of any vehicle in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, including a pedestrian in a marked crosswalk, or unmarked crosswalk at an intersection, shall be guilty of a felony, and shall be punished by imprisonment for not more than 5 years or by a fine of not more than the amount set forth in § 22-3571.01 or both.

(Mar. 3, 1901, ch. 854, § 802(a); June 17, 1935, 49 Stat. 385, ch. 266; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 578, Pub. L. 91-358, title I, § 160(a)(3); Sept. 14, 1982, D.C. Law 4-145, § 8, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 14, 29 DCR 5753; Oct. 9, 1987, D.C. Law 7-34, § 3, 34 DCR 5316; June 11, 2013, D.C. Law 19-317, § 274, 60 DCR 2064.)

Section references. — This section is referenced in § 50-2203.02, § 50-2203.03, § 50-2206.51, and § 50-2302.02.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “of not more than \$5,000”.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

*Subchapter III. Driving While Under the Influence of Alcohol.***§ 50-2205.01. Prima facie evidence of intoxication; relevant evidence of use of intoxicating liquor. [Repealed].**

Editor's notes. — Section 103(a) and (e)(1) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 2 and 3 as Subtitle A of Title I of the act.

Section 103(b) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 4 to 11 as Title II of the act.

Section 103(c) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 12 and 13 as Title III of the act.

Section 103(d) of D.C. Law 19-266 designated D.C. Law 4-145, § 14 as Title IV of the act.

§ 50-2205.02. Evidence of intoxication. [Repealed].

Repealed.

(Sept. 14, 1982, D.C. Law 4-145, § 2, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-714, §§ 4, 5, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(a), 38 DCR 7274; Feb. 5, 1994, D.C. Law 10-68, § 33, 40 DCR 6311; Apr. 13, 1999, D.C. Law 12-212, § 5, 46 DCR 5; Mar. 2, 2007, D.C. Law 16-195, § 2, 53 DCR 8675; Dec. 10, 2009, D.C. Law 18-88, § 229, 56 DCR 7413; Apr. 27, 2013, D.C. Law 19-266, § 103(e)(2)(A), 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2205.03. Admissibility of test results. [Repealed].

Repealed.

(Sept. 14, 1982, D.C. Law 4-145, § 3, 29 DCR 3138; Mar. 9, 1983, D.C. Law 4-174, § 6, 29 DCR 5753; May 5, 1992, D.C. Law 9-96, § 2(b), 38 DCR 7274; Apr. 27, 2013, D.C. Law 19-266, § 103(e)(2)(B), 59 DCR 12957.)

Legislative history of Law 19-266. — See note to § 50-2201.02.

Subchapter III-A. Impaired Operating or Driving.

PART A.

DEFINITIONS.

§ 50-2206.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Active metabolite" means an active form of a drug after it has been processed by the body.

(2) "Alcohol" means a liquid, gas, or solid, containing ethanol from whatever source or by whatever processes produced, whether or not intended for human consumption.

(3) "Chemical test" or "chemical testing" means any qualitative or quantitative procedure which is designed to demonstrate the existence or absence of a chemical compound or chemical group. Any handheld and portable breath testing instrument, otherwise known as a roadside breath test, is excluded from this definition.

(4) "Commercial vehicle" means a vehicle used to transport passengers or property:

(A) If the vehicle has a gross vehicle weight rating of greater than 26,000 pounds or a lesser rating as determined by federal regulation but not less than a gross vehicle weight rating of 10,001 pounds;

(B) If the vehicle is designed to transport more than 15 passengers, including the driver;

(C) If the vehicle is a locomotive or a streetcar;

(D) If the vehicle is used to transport a material found to be hazardous by the Mayor in accordance with Chapter 14 of Title 8 [§ 8-1401 et seq.], or by the Secretary of Transportation in accordance with the Hazardous Materials Transportation Act, approved January 3, 1975 (88 Stat. 2156; 49 U.S.C. § 1801 et seq.); or

(E) If the vehicle is a vehicle for hire.

(5) "Court" means the Superior Court of the District of Columbia, except when used in the definition of "prior offense" when it shall also include courts of other jurisdictions.

(6) "Drug" means any chemical substance that affects the processes of the mind or body, including but not limited to a controlled substance as defined in § 48-901.02(4), and any prescription or non-prescription medication.

(7) "Highway" means any street, road, or public thoroughfare, or the entire width between the boundary lines of every publicly or privately maintained way, when any part thereof is open to the use of the public for purposes of vehicular or pedestrian travel.

(8) "Impaired" means a person's ability to operate or be in physical control of a vehicle is affected, due to consumption of alcohol or a drug or a combination thereof, in a way that can be perceived or noticed.

(9) "Intoxicated" means:

(A) Except as provided in subparagraph (B) of this paragraph, that:

(i) An alcohol concentration at the time of testing of 0.08 grams or more per 100 milliliters of the person's blood or per 210 liters of the person's breath, or of 0.10 grams or more per 100 milliliters of the person's urine; or

(ii) Any measurable amount of alcohol in the person's blood, urine, or breath if the person is under 21 years of age.

(B) If operating or in physical control of a commercial vehicle, that:

(i) An alcohol concentration at the time of testing of 0.04 grams or more per 100 milliliters of the person's blood or per 210 liters of the person's breath, or of 0.08 grams or more per 100 milliliters of the person's urine; or

(ii) Any measurable amount of alcohol in the person's blood, urine, or breath if the person is under 21 years of age.

(10) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

(11) "Mandatory-minimum term of incarceration" means a term of incarceration which shall be imposed and cannot be suspended by the court. The person shall not be released or granted probation, or granted suspension of sentence before serving the mandatory-minimum sentence.

(12) "Mayor" means the Mayor of the District of Columbia or his or her designee.

(13) "Measurable amount" means any amount of alcohol capable of being, but not required to be, measured.

(14) "Minor" means a person under the age of 18 years.

(15) "Motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as defined by paragraph (16) of this section, or a battery-operated wheelchair when operated by a person with a disability.

(16) "Personal mobility device" or "PMD" means a motorized propulsion device designed to transport one person or a self-balancing, 2 non-tandem wheeled device, designed to transport only one person with an electric propulsion system, but does not include a battery-operated wheelchair.

(17) "Prior offense" means any guilty plea or verdict, including a finding of guilty in the case of a juvenile, for an offense under District law or a disposition in another jurisdiction for a substantially similar offense which occurred before the current offense regardless of when the arrest occurred. The term "prior offense" does not include an offense where the later of any term of incarceration, supervised release, parole, or probation ceased or expired more than 15 years before the arrest on the current offense.

(18) "Specimen" means that quantity of a person's blood, breath, or urine necessary to conduct chemical testing to determine alcohol or drug content. A single specimen may be comprised of multiple breaths into a breath test instrument if necessary to complete a valid breath test, or a single blood draw or single urine sample regardless of how many times the blood or urine sample is tested.

(19) "This subchapter" includes all lawful regulations issued thereunder by the Council of the District of Columbia and all lawful rules issued thereunder by the Mayor of the District of Columbia or his designated agent.

(20) "Traffic" includes not only motor vehicles but also all vehicles, pedestrians, and animals, of every description.

(21) "Vehicle" includes any appliance moved over a highway on wheels or traction tread, including street cars, draft animals, and beasts of burden.

(22) "Vehicle for hire" means:

(A) Any motor vehicle operated in the District by a private concern or individual as an ambulance, funeral car, sightseeing vehicle, or for which the rate is fixed solely by the hour;

(B) Any motor vehicle operated in the District by a private concern used for services including transportation paid for by a hotel, venue, or other third party;

(C) Any motor vehicle used to provide transportation within the District between fixed termini or on a schedule, including vehicles operated by the

Washington Metropolitan Area Transit Authority or other public authorities, not including rental cars; or

(D) Any other vehicle that provides transportation for a fee not operated on a schedule or between fixed termini and operating in the District, including taxicabs, limousines, party buses, and pedicabs.

(23) "Watercraft" means a boat, ship, or other craft used for water transportation, as well as water skis, an aquaplane, a sailboard, or a similar vessel.

(Sept. 14, 1982, D.C. Law 4-145, § 3a, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(2)(C), 59 DCR 12957.)

Section references. — This section is referenced in § 1-620.24, § 1-620.33, § 24-211.23, § 50-1301.37, and § 50-1403.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

Editor's notes. — As amended by D.C. Law 19-266, this section had two subdivisions designated as (2), but no subdivision (4). Consequently, the second subdivision (2) and subdivi-

vision (3) were redesignated as (3) and (4), respectively.

Section 103(a) and (e)(1) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 2 and 3 as Subtitle A of Title I of the act.

Section 103(b) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 4 to 11 as Title II of the act.

Section 103(c) of D.C. Law 19-266 designated D.C. Law 4-145, §§ 12 and 13 as Title III of the act.

Section 103(d) of D.C. Law 19-266 designated D.C. Law 4-145, § 14 as Title IV of the act.

PART B.

OPERATING A VEHICLE.

§ 50-2206.11. Driving under the influence of alcohol or a drug.

No person shall operate or be in physical control of any vehicle in the District:

(1) While the person is intoxicated; or

(2) While the person is under the influence of alcohol or any drug or any combination thereof.

(Sept. 14, 1982, D.C. Law 4-145, § 3b, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1905, § 50-2201.05a, § 50-2206.13, § 50-2206.15, § 50-2206.51, § 50-2206.54, § 50-2206.55, and § 50-2206.56.

Effect of amendments. — The 2013

amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.12. Driving under the influence of alcohol or a drug; commercial vehicle.

No person shall operate or be in physical control of any commercial vehicle in the District:

- (1) While the person is intoxicated; or
- (2) While the person is under the influence of alcohol or any drug or any combination thereof.

(Sept. 14, 1982, D.C. Law 4-145, § 3c, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1905, § 50-2201.05a, § 50-2206.13, § 50-2206.15, § 50-2206.17, § 50-2206.51, § 50-2206.54, § 50-2206.55, and § 50-2206.56.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.13. Penalties for driving under the influence of alcohol or a drug.

(a) Except as provided in subsections (b) and (c) of this section, a person violating any provision of § 50-2206.11 or § 50-2206.12 shall upon conviction for the first offense be fined \$1,000, or incarcerated for not more than 180 days, or both; provided, that:

(1) A 10-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine; or

(2) A 15-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or 0.32 grams per 100 milliliters of urine; or

(3) A 20-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.30 grams per 100 milliliters of blood or per 210 liters of breath or 0.39 grams per 100 milliliters of urine; and

(4) A 15-day mandatory-minimum term of incarceration shall be imposed if the person's blood or urine contains a Schedule I chemical or controlled substance as listed in § 48-902.04, Phencyclidine, Cocaine, Methadone, Morphine, or one of its active metabolites or analogs.

(b) A person violating any provision of § 50-2206.11 or § 50-2206.12 when the person has a prior offense under § 50-2206.11, § 50-2206.12, or § 50-2206.14 and is being sentenced on the current offense shall be fined not less than \$2,500 and not more than \$5,000, or incarcerated for not more than one year, or both; provided, that a 10-day mandatory-minimum term of incarceration shall be imposed, and in addition :

(1) A 15-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine; or

(2) A 20-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or more than 0.32 grams per 100 milliliters of urine; or

(3) A 25-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.30 grams per 100 milliliters of blood or per 210 liters of breath or 0.39 grams per 100 milliliters of urine; and

(4) A 20-day mandatory-minimum term of incarceration shall be imposed if the person's blood or urine contains a Schedule I chemical or controlled substance as listed in § 48-902.04, Phencyclidine, Cocaine, Methadone, Morphine, or one of its active metabolites or analogs.

(c) A person violating any provision of § 50-2206.11 or § 50-2206.12 when the person has 2 or more prior offenses under § 50-2206.11, § 50-2206.12, or § 50-2206.14 and is being sentenced on the current offense shall be fined not less than \$2,500 and not more than \$10,000, or incarcerated for not more than one year, or both; provided, that a 15-day mandatory-minimum term of incarceration shall be imposed, and in addition:

(1) A 20-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was at least 0.20 grams per 100 milliliters of blood or per 210 liters of breath, or was at least 0.25 grams per 100 milliliters of urine; or

(2) A 25-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.25 grams per 100 milliliters of blood or per 210 liters of breath or 0.32 grams per 100 milliliters of urine; or

(3) A 30-day mandatory-minimum term of incarceration shall be imposed if the person's alcohol concentration was more than 0.30 grams per 100 milliliters of blood or per 210 liters of breath or 0.39 grams per 100 milliliters of urine; and

(4) A 25-day mandatory-minimum term of incarceration shall be imposed if the person's blood or urine contains a Schedule I chemical or controlled substance as defined in § 48-902.04, Phencyclidine, Cocaine, Methadone, Morphine, or one of its active metabolites or analogs.

(d) An additional 30-day mandatory-minimum term of incarceration shall be imposed for each additional violation of any one or more provisions of § 50-2206.11 or § 50-2206.12 if the person has 3 prior offenses under § 50-2206.11, § 50-2206.12, or § 50-2206.14 and is being sentenced on the current offense.

(e) The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3d, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(1), 59 DCR 12957.)

Section references. — This section is referenced in § 50-2206.17.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 added (e).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2206.14. Operating a vehicle while impaired.

No person shall operate or be in physical control of any vehicle in the District while the person's ability to operate or be in physical control of a vehicle is impaired by the consumption of alcohol or any drug or any combination thereof.

(Sept. 14, 1982, D.C. Law 4-145, § 3e, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1905, § 50-2201.05a, § 50-2206.13, § 50-2206.15, § 50-2206.54, § 50-2206.55, and § 50-2206.56.

amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

Effect of amendments. — The 2013

§ 50-2206.15. Penalty for operating a vehicle while impaired.

(a) Except as provided in subsections (b) and (c) of this section, a person violating § 50-2206.14 shall upon conviction for the first offense be fined \$500, or incarcerated for not more than 90 days, or both.

(b) A person violating any provision of § 50-2206.14 when the person has a prior offense under § 50-2206.11, § 50-2206.12, or § 50-2206.14 and is being sentenced on the current offense shall be fined not less than \$1,000 and not more than \$2,500, or incarcerated for not more than one year, or both; provided, that a 5-day mandatory-minimum term of incarceration shall be imposed.

(c) A person violating any provision of § 50-2206.14 when the person has 2 or more prior offenses under § 50-2206.11, § 50-2206.12, or § 50-2206.14 and is being sentenced on the current offense shall be fined not less than \$1,000 and not more than \$5,000, or incarcerated for not more than one year, or both; provided, that a 10-day mandatory-minimum term of incarceration shall be imposed.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3f, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(2), 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2206.16. Operating under the influence of alcohol or a drug; horse-drawn vehicle.

(a) No person shall operate or be in the physical control of any horse-drawn vehicle while under the influence of alcohol or any drug or any combination thereof.

(b) A person violating the provisions of this section shall, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, or be incarcerated for not more than 90 days, or both.

(c) Civil penalties and fees may be imposed as alternative sanctions for any violation of this section in accordance with the procedures under Chapter 14 of Title 8 [§ 8-1401 et seq.].

(Sept. 14, 1982, D.C. Law 4-145, § 3g, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 272, 60 DCR 2064.)

Section references. — This section is referenced in § 50-2206.54 and § 50-2206.55.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “\$500” in (b).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2206.17. Additional penalty for driving under the influence of alcohol or a drug; commercial vehicle.

A person violating any provision of § 50-2206.12 shall, in addition to any applicable penalty under section § 50-2206.13, be subject to an additional 5 day mandatory-minimum term of incarceration.

(Sept. 14, 1982, D.C. Law 4-145, § 3h, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.18. Additional penalty for impaired driving with a minor in vehicle.

(a) A person convicted of any offense under this part who, at the time of operation or physical control of the vehicle had a minor, other than him or herself, in the vehicle, shall, in addition to any applicable penalty under this part:

- (1) Be fined a minimum of \$500 and not more than \$1,000 per minor; and
- (2) Be incarcerated for a mandatory-minimum term of incarceration of:

(A) 5 days per minor if the minor or minors are restrained in, or by, an age-appropriate child passenger-safety restraint; or

(B) 10 days per minor if the minor or minors are not restrained in, or by, an age-appropriate child passenger-safety restraint.

(b) The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3i, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 redesignated the existing provisions as (a); and added (b).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART C.

OPERATING A WATERCRAFT.

§ 50-2206.31. Operating under the influence of alcohol or a drug; watercraft.

No person shall operate or be in physical control of any watercraft in the District:

- (1) While the person is intoxicated; or
- (2) While the person is under the influence of alcohol or any drug or any combination thereof.

(Sept. 14, 1982, D.C. Law 4-145, § 3j, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1911, § 50-2206.32, § 50-2206.34, § 50-2206.51, and § 50-2206.54.

amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

Effect of amendments. — The 2013

§ 50-2206.32. Penalties for operating watercraft under the influence of alcohol or a drug.

(a) Except as provided in subsections (b) and (c) of this section, a person violating any provision of § 50-2206.31 shall upon conviction for the first offense be fined \$1,000, or incarcerated for not more than 180 days, or both.

(b) A person violating any provisions of § 50-2206.31 when the person has a prior offense under § 50-2206.31 or § 50-2206.33 and is being sentenced on the current offense shall be fined not less than \$2,500 and not more than \$5,000, or incarcerated for not more than one year, or both.

(c) A person violating any one or more provisions of § 50-2206.31 when the person has 2 or more prior offenses under § 50-2206.31 or § 50-2206.33 and is

being sentenced on the current offense shall be fined not less than \$2,500 and not more than \$10,000, or incarcerated for not more than one year, or both.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3k, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(4), 59 DCR 12957.)

Section references. — This section is referenced in § 50-1911.

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2206.33. Operating a watercraft while impaired.

No person shall operate or be in physical control of any watercraft in the District while the person's ability to operate a watercraft in the District is impaired by the consumption of alcohol or any drug or any combination thereof.

(Sept. 14, 1982, D.C. Law 4-145, § 3l, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Section references. — This section is referenced in § 50-2206.32, § 50-2206.34, and § 50-2206.54.

Effect of amendments. — The 2013

amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.34. Penalties for operating watercraft while impaired.

(a) Except as provided in subsections (b) and (c) of this section, a person violating § 50-2206.33 shall upon conviction for the first offense be fined \$250, or incarcerated for not more than 30 days, or both.

(b) A person violating § 50-2206.33 when the person has a prior offense under § 50-2206.31 or § 50-2206.33 and is being sentenced on the current offense shall be fined not more than \$2,500, or incarcerated for not more than 180 days, or both.

(c) A person violating § 50-2206.33 when the person has 2 or more prior offenses under § 50-2206.31 or § 50-2206.33 and is being sentenced on the current offense shall be fined not less than \$2,500 and not more than \$5,000, or incarcerated for not more than one year, or both.

(d) The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3m, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(5), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 added (d).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2206.35. Harbor Master public awareness campaign.

The Harbor Master shall be directly responsible for enforcing this part and shall ensure that the public is made aware of the District's aggressive enforcement policy through a continual public awareness campaign.

(Sept. 14, 1982, D.C. Law 4-145, § 3n, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.36. Additional penalty for impaired operating with a minor in the watercraft.

A person convicted of any offense under this part who, at the time of operation or physical control of the watercraft had a minor, other than him or herself, in the watercraft, shall, in addition to any applicable penalty under this part, be fined a minimum of \$500 and not more than \$1,000 per minor, and be incarcerated a mandatory-minimum term of incarceration of 5 days per minor. The fines set forth in this section shall not be limited by § 22-3571.01.

(Sept. 14, 1982, D.C. Law 4-145, § 3o, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 11, 2013, D.C. Law 19-317, § 113(f)(6), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-317 added the last sentence.

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-317. — See note to § 50-2201.03.

Editor's notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

PART D.

ENFORCEMENT.

§ 50-2206.51. Evidence of impairment.

(a) If as a result of the operation or the physical control of a vehicle, or a watercraft, a person is tried in any court of competent jurisdiction within the District of Columbia for operating or being in physical control of a vehicle, or a watercraft, while under the influence of alcohol in violation of § 50-2206.11,

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§ 50-2206.12, or § 50-2206.31, negligent homicide in violation of § 50-2203.01, or manslaughter committed in the operation of a vehicle in violation of § 22-2105, and in the course of the trial there is received, based upon chemical tests, evidence of alcohol in the defendant's blood, breath, or urine, such evidence shall:

(1) If the defendant's alcohol concentration at the time of testing was less than 0.05 grams per 100 milliliters of blood or per 210 liters of breath or 0.06 grams or less per 100 milliliters of urine, establish a rebuttable presumption that the person was not, at the time, under the influence of alcohol.

(2) If the defendant's alcohol concentration at the time of testing was 0.05 grams or more per 100 milliliters of blood or per 210 liters of breath or more than 0.06 grams of per 100 milliliters of urine, but less than 0.08 grams per 100 milliliters of blood or per 210 liters of breath or less than 0.10 grams per 100 milliliters of urine, constitute prima facie proof that the person was, at the time, under the influence of alcohol.

(b) The rebuttable presumption contained in subsection (a)(1) of this section shall not apply if:

(1) There is evidence that the person is impaired by a drug;

(2) The defendant was operating or in physical control of a commercial vehicle; or

(3) The defendant, at the time of arrest, was under the age of 21.

(Sept. 14, 1982, D.C. Law 4-145, § 3p, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section. **Legislative history of Law 19-266.** — See note to § 50-2201.02.

§ 50-2206.52. Admissibility of chemical test results.

(a) Evidence from breath tests shall not be admitted in a criminal proceeding unless compliance with the following criteria has been shown:

(1) The breath test instrument on which the breath test was conducted was operated by either a certified breath test operator or certified technician;

(2) A certified breath test operator or certified technician observed the administration of the breath test and determined that no contamination by mouth alcohol occurred;

(3) A reference standard was analyzed in conjunction with the subject analyses, and the analytical results of the reference standard agreed with the predicted value within the acceptable range set by regulation pursuant to § 5-1501.07;

(4) Duplicate breath specimens were collected from the person and the analytical results of the paired breath specimens were within the acceptable range set by regulation pursuant to § 5-1501.07;

(5) The breath test instrument analytically demonstrates the absence of ethanol before the testing of each breath specimen;

(6) Analytical results are expressed in grams of alcohol per 210 liters of breath (g/210L); and

(7) The instrument on which the breath test was conducted had been tested within 180 days before the breath test and had been found to be accurate.

(b)(1) Records of maintenance, set by regulation pursuant to § 5-1501.07, shall be admissible in any proceeding as evidence of the operating condition of the breath test instrument at the time of the person's breath test.

(2) Records of maintenance demonstrating that the instrument was in proper operating condition at the time of the person's test shall be prima facie evidence that the instrument was functioning properly.

(c) The inability of any person to obtain either the manufacturer's schematics or software for a quantitative breath testing device shall not affect the admissibility of the results of a breath test pursuant to this section.

(Sept. 14, 1982, D.C. Law 4-145, § 3q, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; Apr. 20, 2013, D.C. Law 19-260, § 4(a), 60 DCR 1292.)

Section references. — This section is referenced in § 50-2206.52a and § 50-2206.52b.

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 rewrote this section.

The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-260. — Law 19-260, the "Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012," was introduced in Council and assigned Bill No. 19-828. The Bill was adopted on first and second readings on Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 9,

2013, it was assigned Act No. 19-612 and transmitted to Congress for its review. D.C. Law 19-260 became effective on Apr. 20, 2013.

Legislative history of Law 19-266. — See note to § 50-2201.02.

Editor's notes. — Section 5 of D.C. Law 19-260 provided that the act shall apply as of the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

§ 50-2206.52a. Presence or testimony of person maintaining breath test instrument in a criminal proceeding.

(a) The record of a breath test is admissible in court as prima facie evidence of the amount of grams of alcohol per 210 liters of a person's breath without the testimony of the persons responsible for maintaining the breath test instrument's proper operating condition if:

(1) The criteria in § 50-2206.52(a) have been met;

(2) The record of a breath test is provided to the person, or his or her counsel, within 15 calendar days of arraignment or notice of appearance of counsel, whichever is later; and

(3) There are more than 30 calendar days between the date the breath test is provided to the person, or his or her counsel, and the trial date.

(b)(1) Notwithstanding subsection (a) of this section, a person may demand the presence of the persons responsible for maintaining the breath test instrument's proper operating condition to provide evidence in the government's case-in-chief by serving upon the government, in writing, his or her request for the live testimony of the persons responsible for maintaining the

breath test instrument's proper operating condition no later than 15 calendar days before trial.

(2) A person's failure to file a timely request pursuant to paragraph (1) of this subsection shall constitute a waiver of the person's right to demand the presence of the persons responsible for maintaining the breath test instrument's proper operating condition to provide evidence in the government's case-in-chief.

(c) For the purposes of this section, the term "record of a breath test" means the analytical results of a breath test administered on:

(1) A breath test instrument operated by the Metropolitan Police Department that has been certified as accurate pursuant to § 5-1507; or

(2) A breath test instrument operated by other law enforcement agencies that has been certified as accurate by the persons designated by that agency to certify the accuracy of the instrument.

(Sept. 14, 1982, D.C. Law 4-145, § 3q-1, as added Apr. 20, 2013, D.C. Law 19-260, § 4(b), 60 DCR 1292.)

Section references. — This section is referenced in § 50-2206.52b.

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 added this section.

Legislative history of Law 19-260. — See note to § 50-2206.52.

Editor's notes. — Section 5 of D.C. Law

19-260 provided that the act shall apply as of the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

§ 50-2206.52b. Notification regarding admissibility of breath test results in a criminal proceeding.

Any person upon whom a breath specimen is collected shall be informed, in writing, of the provisions of §§ 50-2206.52 and 50-2206.52a at the time that person is charged.

(Sept. 14, 1982, D.C. Law 4-145, § 3q-2, as added Apr. 20, 2013, D.C. Law 19-260, § 4(b), 60 DCR 1292.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 added this section.

Legislative history of Law 19-260. — See note to § 50-2206.52.

Editor's notes. — Section 5 of D.C. Law 19-260 provided that the act shall apply as of

the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

§ 50-2206.52c. Admissibility of chemical test results for a criminal proceeding; blood or urine.

The results of chemical testing pertaining to blood or urine used to determine whether the person's specimens contained alcohol or a drug or any combination thereof may be admissible as evidence in a criminal proceeding if the chemical testing was performed at a forensic laboratory, hospital, other equivalent medical facility, or at a laboratory contracted by a hospital or

medical facility to perform chemical testing for specimens supplied by the hospital or equivalent medical facility.

(Sept. 14, 1982, D.C. Law 4-145, § 3q-3, as added Apr. 20, 2013, D.C. Law 19-260, § 4(b), 60 DCR 1292.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-260 added this section.

Legislative history of Law 19-260. — See note to § 50-2206.52.

Editor's notes. — Section 5 of D.C. Law 19-260 provided that the act shall apply as of

the effective date of the Comprehensive Impaired Driving and Alcohol Breath Testing Program Amendment Act of 2012, signed by the Mayor on October 24, 2012 (D.C. Act 19-489; 59 DCR 12957), which became D.C. Law 19-266, effective April 27, 2013.

§ 50-2206.53. Prosecution and diversionary program.

(a) The Attorney General of the District of Columbia, or his or her assistants, shall prosecute violations of this subchapter, in the name of the District of Columbia.

(b) The Attorney General may request that a person who is charged with a violation of any provision of this subchapter, as a condition to acceptance into a diversion program in lieu of prosecution, pay the District of Columbia or its agents a reasonable fee for the costs to the District of the person's participation in the diversion program; provided, that:

(1) The Attorney General shall set the fee by rule and at a level which the Attorney General determines will not unreasonably discourage persons from entering the diversion program;

(2) The Attorney General may reduce or waive the fee if the Attorney General finds that the person is indigent; and

(3) The Mayor shall determine the provider, the content, and eligibility requirements for any diversion program.

(Sept. 14, 1982, D.C. Law 4-145, § 3r, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.54. Assessment of alcohol or drug abuse and treatment.

Any person convicted of violating sections § 50-2206.11, § 50-2206.12, § 50-2206.14, § 50-2206.16, § 50-2206.31, or § 50-2206.33 who has prior offense under sections § 50-2206.11, § 50-2206.12, § 50-2206.14, § 50-2206.16, § 50-2206.31, or § 50-2206.33, shall have his or her alcohol or drug abuse history assessed and a treatment program prescribed as appropriate.

(Sept. 14, 1982, D.C. Law 4-145, § 3s, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

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Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section. **Legislative history of Law 19-266.** — See note to § 50-2201.02.

§ 50-2206.55. Revocation of permit or privilege to drive.

(a) The Mayor or his or her designated agent shall revoke the operator's permit or the privilege to drive a motor vehicle in the District of Columbia, or revoke both such permit and privilege, of any person who is convicted or adjudicated a juvenile delinquent as a result of the commission in the District of any of the following offenses:

(1) A violation of sections § 50-2206.11, § 50-2206.12, § 50-2206.14, or § 50-2206.16;

(2) A homicide committed by means of a motor vehicle;

(3) A violation of § 50-2201.05c or § 50-2201.05d;

(4) Aggravated reckless driving;

(5) Operating or being in physical control of a vehicle while intoxicated or impaired by the consumption of alcohol or a drug or any combination thereof where such operation or physical control leads to bodily injury; or

(6) Any felony in the commission of which a motor vehicle is involved.

(b) Whenever a judgment of conviction of any offense set forth in subsection (a) of this section has become final, the clerk of the court in which the judgment was entered shall certify such conviction to the Mayor or his or her designated agent, who shall thereupon take the action required by subsection (a) of this section. A judgment of conviction shall be deemed to have become final for the purposes of this subsection if:

(1) No appeal is taken from the judgment, upon the expiration of the time within which an appeal could have been taken; or

(2) An appeal is taken from the judgment, the date upon which the judgment, having been sustained, can no longer be appealed from or reviewed on a writ of certiorari.

(Sept. 14, 1982, D.C. Law 4-145, § 3t, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957; June 8, 2013, D.C. Law 19-316, § 6, 60 DCR 1713.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

The 2013 amendment by D.C. Law 19-316 substituted "Aggravated reckless driving" for "Reckless driving" in (a)(4).

Legislative history of Law 19-266. — See note to § 50-2201.02.

Legislative history of Law 19-316. — See note to § 50-2201.04.

Editor's notes. — Section 8 of D.C. Law 19-316 provided that the act shall apply as of June 1, 2013.

§ 50-2206.56. Impounding of vehicle; release of vehicle; liability.

(a)(1) Except as provided in paragraph (2) of this subsection, when a law enforcement officer arrests a person for a violation of § 50-2206.11, § 50-2206.12, or § 50-2206.14, the law enforcement officer shall cause the motor vehicle which the arrested person operated or controlled to be impounded.

(2) The law enforcement officer shall not cause the vehicle to be impounded if:

(A) A registered owner of the vehicle authorizes the law enforcement officer to release the vehicle to a person:

- (i) Who is in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Whom the law enforcement officer determines to be in physical condition to operate the vehicle without violating § 50-2206.11, § 50-2206.12, or § 50-2206.14;

(B) A registered owner of the vehicle:

- (i) Is present to take custody of the vehicle;
- (ii) Has in his or her immediate possession a valid permit to operate a motor vehicle; and
- (iii) Is determined by the law enforcement officer to be in physical condition to operate the vehicle without violating § 50-2206.11, § 50-2206.12, or § 50-2206.14; or

(C) The arrested person authorizes the law enforcement officer to release the vehicle to a person:

- (i) Who is not in the company of the arrested person;
- (ii) Who has in his or her immediate possession a valid permit to operate a motor vehicle;
- (iii) Whom the law enforcement officer determines to be in physical condition to operate the vehicle without violating § 50-2206.11, § 50-2206.12, or § 50-2206.14; and
- (iv) Who shall take possession of the vehicle within a reasonable period of time from a public parking space to be determined by the arresting law enforcement officer.

(b)(1) Except as provided in paragraph (2) of this subsection or in subsection (c) of this section, an impounded vehicle shall be released:

(A) At any time to a registered owner of the vehicle, other than the arrested person; or

(B) 24 hours after the arrest, to the arrested person.

(2) No vehicle shall be released to a person unless a law enforcement officer determines that the person is in physical condition to operate a motor vehicle without violating § 50-2206.11, § 50-2206.12, or § 50-2206.14.

(3) If the law enforcement officer has a reasonable suspicion that the person is not in the physical condition required by paragraph (2) of this subsection, the law enforcement officer may direct that the person submit specimens for chemical testing to determine whether the person is impaired. The results of the tests may not be used as evidence in any criminal proceeding. If the person refuses to submit specimens for chemical tests, the law enforcement officer may determine that the person does not meet the condition of paragraph (2) of this subsection.

(c) Any motor vehicle that is impounded shall be subject to an impoundment charge of \$50, which shall be paid before the release of the motor vehicle. Any motor vehicle that remains impounded and unclaimed for more than 72 hours

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shall be processed and handled as an abandoned vehicle, and shall be subject to any other charges and costs, including storage fees and relocation costs, as provided and assessed by the Mayor.

(d)(1) Except as provided in paragraph (2)(B) of this subsection, the District of Columbia and its employees may not be liable for damage to property which results from any act or omission in the implementation of any provisions of this section.

(2)(A) The District of Columbia and its employees may be liable for injury to persons which results from any act or omission in the implementation of any provisions of this section.

(B) An employee of the District of Columbia may be liable for injury to persons or damage to property which results from the gross negligence of the employee. The District of Columbia may also be liable for the resulting injury to persons or damage to property if the act or omission of the employee which constitutes gross negligence occurred while the employee was engaged in furthering the governmental interest of the District of Columbia.

(Sept. 14, 1982, D.C. Law 4-145, § 3u, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-1901.

§ 50-2206.57. Mandatory-minimum periods.

(a) A mandatory-minimum term of incarceration as provided in this subchapter shall be proven to the court by a preponderance of the evidence.

(b) A person sentenced for an offense under this subchapter may be subjected to multiple mandatory-minimum terms of incarceration. Each mandatory-minimum term of incarceration must be served consecutively, except that no combination of mandatory-minimum terms of incarceration shall exceed the maximum penalty for the offense, including any applicable enhancements.

(Sept. 14, 1982, D.C. Law 4-145, § 3v, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-266 added this section.

Legislative history of Law 19-266. — See note to § 50-2201.02.

§ 50-2206.58. Fines.

Notwithstanding any other provision of law, all fines imposed and collected pursuant to this subchapter during fiscal year 2006 and each succeeding fiscal year shall be transferred to the General Fund of the District of Columbia.

(Sept. 14, 1982, D.C. Law 4-145, § 3w, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 **Legislative history of Law 19-266.** — See amendment by D.C. Law 19-266 added this note to § 50-2201.02. section.

§ 50-2206.59. Effect of later repeal or amendment.

Any violation of any provision of law or regulation issued hereunder which is repealed or amended by this subchapter, and any liability arising under such provisions or regulations may, if the violation occurred or the liability arose prior to such repeal or amendment, be prosecuted to the same extent as if this subchapter had not been enacted.

(Sept. 14, 1982, D.C. Law 4-145, § 3x, as added Apr. 27, 2013, D.C. Law 19-266, § 103(e)(3), 59 DCR 12957.)

Effect of amendments. — The 2013 **Legislative history of Law 19-266.** — See amendment by D.C. Law 19-266 added this note to § 50-2201.02. section.

Subchapter V. Automated Traffic Enforcement.

PART A.

GENERAL.

§ 50-2209.01. Authorized; violations as moving violations; evidence; definition.

Editor's notes. — Because of the codification of D.C. Law 19-223, § 103 as Part B of this subchapter, the preexisting text, §§ 50-2209.01 to 50-2209.03, has been designated as Part A.

PART B.

AUTOMATED ENFORCEMENT EXPANSION PLAN.

§ 50-2209.11. Automated enforcement expansion plan.

Not later than April 1, 2013, the Mayor shall transmit to the Council a plan for expansion of automated traffic enforcement in the District. The plan shall include:

(1) An explanation of the plan; its goals, and the strategies to achieve the goals, such as red light, speed, fixed, and mobile;

(2) A recommended number of automated enforcement cameras, by category, that should be deployed in the District to achieve appropriate levels of enforcement and associated traffic safety results;

(3) A timeline for deploying the recommended number of cameras, including the number of additional cameras needed, by category and by fiscal year; and

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(4) The amount of funding necessary, in addition to what has been authorized as of the date of the plan's publication, by fiscal year, to attain the target number of cameras.

(May 1, 2013, D.C. Law 19-307, § 103, 60 DCR 2753.)

Legislative history of Law 19-307. — See 19-307: Section 401(a) of D.C. Law 19-307 provided that this section shall apply as of May 1, 2013.

Editor's notes. — Applicability of D.C. Law

CHAPTER 23. TRAFFIC ADJUDICATION.

Subchapter I. General Provisions

Sec.

50-2301.02. Definitions.

50-2301.05. Monetary sanctions.

Subchapter II. Moving Infractions

50-2302.02. Exceptions.

50-2302.03. Exception for serious offenders.

Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions

Sec.

50-2303.02. Exceptions for serious offenders.

Subchapter I. General Provisions.

§ 50-2301.02. Definitions.

For the purpose of this chapter:

(1) The term "Department" means the Department of Motor Vehicles, established pursuant to § 50-901.

(2) The term "Director" means the Director of the Department of Motor Vehicles or his or her designee.

(3) The term "District" means the District of Columbia.

(4) The term "infraction" means any conduct subject to administrative adjudication under the provisions of this chapter and with respect to which the Corporation Counsel does not commence a proceeding in the Superior Court of the District of Columbia.

(5) The term "lessor" means any owner of a vehicle engaged in the business of renting or leasing vehicles to be used or operated in the District.

(5A) The term "motor vehicle" means all vehicles propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon stationary rails or tracks, personal mobility devices, as defined by § 50-2201.02(12), or a battery-operated wheelchair when a person with a disability.

(6) The term "operator" means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency in the business of renting or leasing vehicles to be used or operated in the District;

(B) An owner who operates his own vehicle; or

(C) A person who operates a vehicle owned by another.

(7) The term "owner" means:

(A) Any person, corporation, firm, agency, association, organization, federal, state or local governmental agency or other authority or other entity having the property of or title to a vehicle used or operated in the District; or

(B) Any registrant of a vehicle used or operated in the District; or

(C) Any person, corporation, firm, agency, association, organization, federal, state or local government agency or authority or other entity in the business of renting or leasing vehicles to be used or operated in the District.

(8) The term “related vehicle conveyance fee” means a vehicle conveyance fee that is related to a civil fine because the imposition of each arises from the same parking infraction.

(9) The term “vehicle conveyance fee” means the charge for moving (by towing or otherwise) an unattended vehicle parked in violation of any traffic regulation (except overtime parking of less than 24 hours) to a legal parking place, other than at an impoundment facility.

(Sept. 12, 1978, D.C. Law 2-104, § 102, 25 DCR 1275; Mar. 15, 1985, D.C. Law 5-176, § 4, 32 DCR 748; Apr. 27, 2001, D.C. Law 13-289, § 302(a), 48 DCR 2057; Mar. 25, 2003, D.C. Law 14-235, § 11, 49 DCR 9788; Mar. 13, 2004, D.C. Law 15-105, § 90(a), 51 DCR 881; Mar. 6, 2007, D.C. Law 16-224, § 209, 53 DCR 10225; Mar. 20, 2009, D.C. Law 17-303, § 4(a), 55 DCR 12803.)

Section references. — This section is referenced in § 50-1621 and § 50-2201.02.

§ 50-2301.05. Monetary sanctions.

(a) The maximum monetary sanctions that may be imposed under this chapter shall be as follows:

(1) The civil fine for an infraction shall be an amount equal to the collateral or bond established for the offense, equivalent to the infraction, by the Board of Judges of the Superior Court of the District of Columbia on the day before September 12, 1978. The Mayor may issue proposed rules, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], to propose changes to the schedule of fines. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sunday, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules by resolution within this 45-day review period, the proposed rules shall be deemed approved. Notwithstanding § 2-505(c), the Mayor may not amend the schedule of fines until the Council has approved the proposed rules or the proposed rules have been deemed approved.

(2) In addition to the civil fine, the following penalties may be imposed:

(A) In the case of a person receiving a notice of infraction who fails to answer such notice within the time specified by §§ 50-2302.05(d)(1) and 50-2303.05(d)(1), a penalty equal to the amount of the civil fine;

(B) In the case of a person receiving a notice of infraction who fails to answer such notice by the close of business on the date set for the hearing or who answers but fails without good cause to appear at such hearing, with respect to infractions under subchapter II of this chapter, a penalty equal to twice the amount of the civil fine and, with respect to infractions under

subchapter III of this chapter, a penalty equal to the amount of the civil fine plus \$5.

(b) A respondent may pay such fines and penalties by use of credit cards approved by the Director.

(c) The Director may permit, in his or her sole discretion, persons owing substantial fines, fees or charges to the Department to pay the amounts owed in installments at intervals as the Director may decide.

(Sept. 12, 1978, D.C. Law 2-104, § 105, 25 DCR 1275; Aug. 1, 1985, D.C. Law 6-15, § 9, 32 DCR 3570; Apr. 27, 2001, D.C. Law 13-289, § 302(c), 48 DCR 2057; Sept. 20, 2012, D.C. Law 19-168, § 1054(b)[c], 59 DCR 8025; May 1, 2013, D.C. Law 19-307, § 106, 60 DCR 2753.)

Section references. — This section is referenced in § 31-2413, § 50-1401.01, § 50-1501.02, § 50-2207.02, § 50-2302.05, § 50-2302.06, § 50-2303.04a, § 50-2303.05, and § 50-2303.06.

Effect of amendments.

The 2013 amendment by D.C. Law 19-307 rewrote (a)(1).

Legislative history of Law 19-307. — Law 19-307, the “Safety-Based Traffic Enforcement Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-1013. The Bill

was adopted on first and second readings on December 4, 2012, and December 18, 2012, respectively. Enacted without signature of the Mayor on February 5, 2013, it was assigned Act No. 19-674 and transmitted to Congress for its review. D.C. Law 19-307 became effective on May 1, 2013.

Editor’s notes.

Applicability of D.C. Law 19-307: Section 401(a) of D.C. Law 19-307 provided that the 2013 amendment to this section shall apply as of May 1, 2013.

Subchapter II. Moving Infractions.

§ 50-2302.02. Exceptions.

The provisions of this subchapter shall not apply to the following violations, which shall continue to be prosecuted as criminal offenses:

(1) Any felony or any misdemeanor for which the provision prohibiting the same is not codified in: (A) Title 50 of the District of Columbia Official Code; (B) Title 14 of the District of Columbia Rules and Regulations; (C) Title 32 of the District of Columbia Rules and Regulations; or (D) Highways and Traffic Regulations of the District of Columbia; provided, that upon the Mayor complying with § 2-602, and transmitting to the Council a complete and accurate draft of a District of Columbia Municipal Code, this paragraph shall stand amended upon publication of such Municipal Code to substitute in subparagraphs (B), (C) and (D) of this paragraph, the appropriate titles of such Municipal Code;

(2) Repealed;

(2A) Violation of § 50-2201.04(b-1);

(3) Violation of § 50-2203.01;

(4) Violation of § 50-2201.05(a);

(5) Violation of § 50-2201.05(b);

(6) Violation of § 50-2207.01 [repealed];

(7) Violation of § 50-1501.04;

(8) Violation of § 50-1401.01(d);

(9) Violation of § 50-1403.01(e);

(10) Violation of Commissioners' Order No. 57-1086, dated June 11, 1957 (Highway and Traffic Regulations, § 22(d)) (driving at a speed greater than 30 miles per hour in excess of the legal speed limit);

(11) Violation of § 2.401(1) of Title 32 of the District of Columbia Rules and Regulations (failure or refusal to surrender an operator's license which has been suspended, revoked or cancelled);

(12) Commission of any offense contained in Chapters VII or VIII of Title 32 of the District of Columbia Rules and Regulations;

(13) Violation of § 11.701(a) of Title 32 of the District of Columbia Rules and Regulations (tampering with a locked or secured bicycle);

(14) Violation of § 2.501 of Title 32 of the District of Columbia Rules and Regulations (acting as a driving school instructor without a license);

(15) Violation of § 2.801 of Title 32 of the District of Columbia Rules and Regulations (operating a school bus without a permit);

(16) Violation of § 5.201 of Title 32 of the District of Columbia Rules and Regulations (carrying on or conducting the business of a dealer without a registration);

(17) Violation of subsection (d) of Commissioners' Order No. 66-535, dated April 21, 1966 (Highways and Traffic Regulations, § 87(d)) (unauthorized use of emergency parking permits);

(18) Violation of § 50-1401.01(c);

(19) Violation of 18 DCMR § 2000.2; and

(20) Violation of § 50-2303.07(b).

(Sept. 12, 1978, D.C. Law 2-104, § 202, 25 DCR 1275; Oct. 8, 1981, D.C. Law 4-36, § 4(a), 28 DCR 3383; Nov. 17, 1981, D.C. Law 4-52, § 3(f), 28 DCR 4348; June 8, 2013, D.C. Law 19-316, § 3, 60 DCR 1713.)

Section references. — This section is referenced in § 50-921.04, § 50-2301.04, § 50-2302.01, and § 50-2303.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-316 repealed (2); and added (2A).

Legislative history of Law 19-316. — Law 19-316, the "Reckless Driving Amendment Act of 2012," was introduced in Council and as-

signed Bill No. 19-823. The Bill was adopted on first and second readings on Nov. 1, 2012, and Nov 15, 2012, respectively. Signed by the Mayor on Jan. 22, 2013, it was assigned Act No. 19-630 and transmitted to Congress for its review. D.C. Law 19-316 became effective on June 8, 2013.

Editor's notes.

Section 8 of D.C. Law 19-316 provided that the act shall apply as of June 1, 2013.

§ 50-2302.03. Exception for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed an infraction who, during the 18-month period immediately preceding the date of the infraction, has been assessed 12 or more traffic points pursuant to § 2.305 of Title 32 of the District of Columbia Rules and Regulations. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment of up to 10 days, or both, in addition to any penalties imposed for driving after suspension or revocation.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated 12 or more traffic points pursuant to subsection (a) of this section. If the Corporation Counsel asserts jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated in the manner of civil infractions pursuant to this subchapter.

(c) A person, over whom the Corporation Counsel asserts jurisdiction pursuant to this section, shall be notified that his infraction shall be subject to criminal prosecution. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding.

(Sept. 12, 1978, D.C. Law 2-104, § 203, 25 DCR 1275; June 11, 2013, D.C. Law 19-317, § 275(a), 60 DCR 2064.)

Section references. — This section is referenced in § 50-2302.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “not to exceed \$300” in (a).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill was adopted on first and second readings on

Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

Subchapter III. Parking, Standing, Stopping and Pedestrian Infractions.

§ 50-2303.02. Exceptions for serious offenders.

(a) Except as provided in subsection (b) of this section, the provisions of this subchapter shall not apply to a person alleged to have committed a parking, standing, or stopping infraction who, during the 18 months immediately preceding the date of the infraction, has been assessed in excess of \$750 in fines, including any penalties imposed by law for failure to timely pay such fines. Such person shall be subject to criminal prosecution by the Corporation Counsel for such offense in the Superior Court of the District of Columbia and, upon conviction, shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment of up to 10 days, or both, for each infraction.

(b) The Director shall promptly inform the Corporation Counsel of an infraction by any person who has accumulated in excess of \$750 in fines pursuant to subsection (a) of this section. If the Corporation Counsel asserts

jurisdiction over such person, he may be prosecuted without respect to the provisions of this chapter; provided, that if the Corporation Counsel affirmatively declines to take jurisdiction or does not assert jurisdiction over such offender within 15 calendar days of his receipt of notification by the Director of a violation by such person, such violation shall be adjudicated as a civil infraction pursuant to this subchapter.

(c) A person over whom the Corporation Counsel asserts jurisdiction pursuant to this section shall be notified that his infraction shall be treated as a criminal matter. Such notification shall be sent by the Corporation Counsel by certified mail directed to the recorded address of such person. No actions or statements of the respondent made in compliance or attempted compliance with this chapter before the receipt of such notice, including but not limited to admissions or admissions with explanation, shall be admissible in any such criminal proceeding.

(Sept. 12, 1978, D.C. Law 2-104, § 302, 25 DCR 1275; June 11, 2013, D.C. Law 19-317, § 275(b), 60 DCR 2064.)

Section references. — This section is referenced in § 50-2303.01.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “not to exceed \$300” in (a).

Legislative history of Law 19-317. — See note to § 50-2302.03.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 23A. AUTONOMOUS VEHICLES.

Sec.

50-2351. Definitions.

50-2352. Autonomous vehicles permitted.

50-2353. Vehicle conversion; limited liability of original manufacturer.

Sec.

50-2354. Rules.

§ 50-2351. Definitions.

For the purposes of this chapter, the term:

(1) “Autonomous vehicle” means a vehicle capable of navigating District roadways and interpreting traffic-control devices without a driver actively operating any of the vehicle’s control systems. The term “autonomous vehicle” excludes a motor vehicle enabled with active safety systems or driver-assistance systems, including systems to provide electronic blind-spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane-keep assistance, lane-departure warning, or traffic-jam and queuing assistance, unless the system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without active control or monitoring by a human operator.

(2) “Driver” means a human operator of a motor vehicle with a valid driver’s license.

(3) “Public roadway” means a street, road, or public thoroughfare that allows motor vehicles.

(4) "Traffic control device" means a traffic signal, traffic sign, electronic traffic sign, pavement marking, or other sign, device, or apparatus designed and installed to direct moving traffic.

(Apr. 23, 2013, D.C. Law 19-278, § 2, 60 DCR 2119.)

Legislative history of Law 19-278. — Law 19-278, the "Autonomous Vehicle Act of 2012," was introduced in Council and assigned Bill No. 19-931. The Bill was adopted on first and second readings on Dec. 4, 2012 and Dec. 18,

2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-643 and transmitted to Congress for its review. D.C. Law 19-278 became effective on April 23, 2013.

§ 50-2352. Autonomous vehicles permitted.

An autonomous vehicle may operate on a public roadway; provided, that the vehicle:

- (1) Has a manual override feature that allows a driver to assume control of the autonomous vehicle at any time;
- (2) Has a driver seated in the control seat of the vehicle while in operation who is prepared to take control of the autonomous vehicle at any moment; and
- (3) Is capable of operating in compliance with the District's applicable traffic laws and motor vehicle laws and traffic control devices.

(Apr. 23, 2013, D.C. Law 19-278, § 3, 60 DCR 2119.)

Legislative history of Law 19-278. — See note to § 50-2351.

§ 50-2353. Vehicle conversion; limited liability of original manufacturer.

(a) The original manufacturer of a vehicle converted by a third party into an autonomous vehicle shall not be liable in any action resulting from a vehicle defect caused by the conversion of the vehicle, or by equipment installed by the converter, unless the alleged defect was present in the vehicle as originally manufactured.

(b) The conversion of vehicles to autonomous vehicles shall be limited to model years 2009 or later or vehicles built within 4 years of conversion, whichever vehicle is newer.

(Apr. 23, 2013, D.C. Law 19-278, § 4, 60 DCR 2119.)

Legislative history of Law 19-278. — See note to § 50-2351.

§ 50-2354. Rules.

The Mayor, pursuant to subchapter I of Chapter 2 of Title 5 [§ 2-501 et seq.], shall issue rules on or before December 31, 2013, establishing a class of vehicles for autonomous vehicles and procedures and fees for the registration, titling, and issuance of permits to operate autonomous vehicles.

(Apr. 23, 2013, D.C. Law 19-278, § 5, 60 DCR 2119.)

Legislative history of Law 19-278. — See note to § 50-2351.

SUBTITLE VIII. VEHICLES ON PUBLIC AND PRIVATE SPACE.

CHAPTER 24. ABANDONED AND JUNK VEHICLE REMOVAL.

Subchapter II. Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles

Sec.
50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.

Sec.

50-2421.09. Procedures for reclaiming impounded vehicles; lien; penalties.

50-2421.10. Disposal of unclaimed vehicles; penalties; auction admission fees.

Subchapter II. Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles.

§ 50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.

(a) The District government, or any towing company at the direction of the Department shall remove an abandoned or dangerous vehicle parked, left, or stored on public space in violation of § 50-2421.03(1), as follows:

(1) An abandoned vehicle shall be removed 48 hours after a warning notice has been conspicuously placed on the vehicle. The warning notice shall be placed at the first sighting of a vehicle that meets the physical characteristics of an abandoned vehicle. The warning notice shall indicate the date and time it was placed and the date and time that the District is authorized to remove, impound, or dispose of the vehicle if the vehicle is not moved. The notice shall also include a statement indicating the vehicle will not be towed if the owner or other authorized person certifies to the Department that the vehicle is undergoing emergency repair. The notice shall provide a telephone number, and website if any, that will inform the owner how to accomplish the certification.

(2) A dangerous vehicle shall be immediately removed without the placement of a warning notice.

(b) If more than one basis exists for removing a vehicle, whether stated in this subchapter or in any other law or regulation, the shortest removal period shall apply, including removal without a warning notice.

(c) No vehicle shall be removed from public space pursuant to this section until a notice of infraction is conspicuously placed on the vehicle.

(d) Except as provided in this section, it shall be unlawful for any person, except the owner, a person authorized by the owner in writing, an employee of the District government in connection with the performance of official duties,

or a tow crane operator who has valid authorization from the District government, to do any of the following:

(1) Tamper with, remove, or attempt to tamper with or remove any vehicle owned by another person;

(2) Tamper with, remove, or attempt to tamper with or remove any vehicle that is on public space and to which a District government warning notice that relates to the removal of the vehicle has been affixed; or

(3) Remove, mutilate, or attempt to remove or mutilate the warning notice.

(e) Any person violating the provisions of subsection (d) of this section, shall be prosecuted by the Office of the Corporation Counsel, and shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment of not more than 90 days, or both.

(Oct. 28, 2003, D.C. Law 15-35, § 4, 50 DCR 6579; June 11, 2013, D.C. Law 19-317, § 276(a), 60 DCR 2064.)

Section references. — This section is referenced in § 50-2402.

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “of not more than \$500” in (e).

Legislative history of Law 19-317. — Law 19-317, the “Criminal Fine Proportionality Amendment Act of 2012,” was introduced in Council and assigned Bill No. 19-214. The Bill

was adopted on first and second readings on Oct. 16, 2012, and Nov. 1, 2012, respectively. Signed by the Mayor on Jan. 23, 2013, it was assigned Act No. 19-641 and transmitted to Congress for its review. D.C. Law 19-317 became effective on June 11, 2013.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2421.09. Procedures for reclaiming impounded vehicles; lien; penalties.

(a) An owner or lienholder, or a person duly authorized by either, may reclaim an impounded vehicle stored at a District government impoundment facility at any time prior to the expiration of the applicable reclamation period, by:

(1) Repealed;

(2) Repealed;

(3) Repealed;

(4) Paying any booting fee and all outstanding fines and penalties for infractions for which liability has been admitted, deemed admitted, or sustained after hearing;

(5) Furnishing proof of entitlement to possession of the vehicle;

(6) Paying to the District government, or the towing company, as directed by the Department, a towing fee of \$100 and a storage fee of \$20 per day; provided, that the towing fee shall be \$275 and a storage fee of \$20 per day shall be imposed if the size or the weight of the impounded vehicle requires the Department or an outside contractor to use special equipment to tow the vehicle; provided further, that the towing fee shall be \$1,000 if the vehicle was impounded pursuant to a violation of 18 DCMR § 2405.3(e).

(b) Fines and penalties due for parking tickets issued to a vehicle and the towing and storage fee charges due pursuant to subsection (a)(6) of this section

shall constitute a continuing lien against the impounded motor vehicle. The lien thus created shall be an automatic lien, which is perfected as of the first date that the fines, penalties, or fees are due and shall be a prior and preferred claim over all other liens.

(c) Any person who has paid a fine for parking, storing, or leaving an abandoned or dangerous vehicle on public space, and who, after reclaiming the vehicle, thereafter again parks, stores, or leaves that vehicle on public space in violation of § 50-2421.03(1), shall be prosecuted by the Office of the Corporation Counsel, and shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment of not more than 90 days, or both.

(Oct. 28, 2003, D.C. Law 15-35, § 9, 50 DCR 6579; June 22, 2006, D.C. Law 16-139, § 11, 53 DCR 3682; Mar. 14, 2007, D.C. Law 16-279, § 302, 54 DCR 903; Sept. 18, 2007, D.C. Law 17-20, § 6073, 54 DCR 7052; June 11, 2013, D.C. Law 19-317, § 276(b), 60 DCR 2064.)

Section references. — This section is referenced in § 22-2724 and § 50-2702.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not more than \$500” in (c).

Legislative history of Law 19-317. — See note to § 50-2421.04.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2421.10. Disposal of unclaimed vehicles; penalties; auction admission fees.

(a) The Department may, consistent with reasonable business practices, sell or otherwise dispose of an unclaimed vehicle.

(b) If an unclaimed vehicle is sold at a public auction or through other means pursuant to subsection (a) of this section, the purchaser shall take title to the vehicle free and clear of all liens and claims of ownership by others, receive a sales receipt, and be entitled, upon application and the payment of all applicable fees, to a certificate of title and registration; provided, that all other eligibility requirements are met.

(c) The Department shall retain the proceeds of the sale or disposition of any vehicle an amount that represents reimbursement for the costs of sale, the costs of towing and storing the vehicle, the costs of furnishing notice and other related enforcement activities, the payment of such liens as were declared null and void, and the remainder shall be deposited into the General Fund.

(d) Except for vehicles enclosed on private property or located on the property of a business engaged in the lawful repair, storage, salvage, or disposal of vehicles, any person who purchases a vehicle that has been sold for salvage only from the Department, and who, thereafter, leaves, stores, or parks the vehicle on public space or private property, shall be guilty of a misdemeanor prosecuted by the Office of the Corporation Counsel, and shall be subject to a fine for each offense of not more than the amount set forth in § 22-3571.01, imprisonment for a period not to exceed one year, or both.

(e) The Director is authorized to establish a non-refundable cost-based auction admission fee. The proceeds from this fee shall be used to offset the

costs of all vehicle auctions held on the day of the auctions. The proceeds from the fee shall be deposited into the General Fund.

(Oct. 28, 2003, D.C. Law 15-35, § 10, 50 DCR 6579; Sept. 14, 2011, D.C. Law 19-21, § 9101, 58 DCR 6226; Sept. 26, 2012, D.C. Law 19-171, § 146, 59 DCR 6190; June 11, 2013, D.C. Law 19-317, § 276(c), 60 DCR 2064.)

Section references. — This section is referenced in § 22-2724 and § 50-2402.

Effect of amendments.

The 2013 amendment by D.C. Law 19-317 substituted “of not more than the amount set forth in § 22-3571.01” for “not to exceed \$5,000” in (d).

Legislative history of Law 19-317. — See note to § 50-2421.04.

Editor’s notes. — Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

CHAPTER 26. REGULATION OF PARKING.

Subchapter III. Miscellaneous

Sec.

50-2632. Parking of automobiles in Municipal Center; regulations; violations and penalties.

Sec.

50-2635. Contractor daytime parking permit.

Subchapter III. Miscellaneous.

§ 50-2632. Parking of automobiles in Municipal Center; regulations; violations and penalties.

(a) The Council of the District of Columbia is authorized, in its discretion, to permit such officers and employees of the District of Columbia government as the Council may select to park motor vehicles in any building or buildings now or hereafter erected upon squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, and to make regulations, which the Mayor shall enforce, for the control of the parking of such vehicles, including the authority to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking of such vehicles.

(b) The Council is further authorized, in its discretion, to permit the public to park motor vehicles in such portion or portions of squares no. 490, 491, and 533, and reservation no. 10, in the District of Columbia, known as the Municipal Center, as may be set apart by the said Council for such purpose, and to make such regulations, which the Mayor shall enforce, as the Council may deem advisable for the control of parking in such portion or portions of the Municipal Center as the Council may set apart for such purpose, including authority to restrict the privilege of parking therein to persons having business in the Municipal Center, and to make regulations, which the Mayor shall enforce, to prohibit parking in all portions of the Municipal Center not set apart by the Council for such purpose. The Council is further authorized in its discretion, to prescribe fees and charges, which the Mayor shall collect, for the privilege of parking motor vehicles in such portion or portions of the Municipal

Center as may be set apart for such purpose, and, to aid in the collection of such fees and charges and the enforcement of such regulations, the Mayor may install mechanical parking meters or devices.

(c) The Council is further authorized to prescribe reasonable penalties of fine not more than the amount set forth in § 22-3571.01 or imprisonment not to exceed 10 days for the violation of any regulation promulgated under the authority of this section.

(June 6, 1940, 54 Stat. 241, ch. 253, §§ 1, 2, 3; June 11, 2013, D.C. Law 19-317, § 277, 60 DCR 2064.)

Effect of amendments. — The 2013 amendment by D.C. Law 19-317 substituted “not more than the amount set forth in § 22-3571.01” for “not to exceed \$25” in (c).

Legislative history of Law 19-317. — See note to § 50-1501.04.

Editor’s notes.

Applicability of D.C. Law 19-317: Section 401 of D.C. Law 19-317 provided that the act shall apply only to offenses committed on or after June 11, 2013.

§ 50-2635. Contractor daytime parking permit.

(a) The District Department of Transportation (“DDOT”) shall establish a contractor daytime parking permit program (“Program”) pursuant to the requirements of this section.

(b) Under the Program, a commercial vehicle, as defined by section 9901.1 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 9901.1), shall be able to obtain a contractor daytime parking permit (“CDP permit”) allowing the vehicle to be parked at a legal, on-street parking space designated for residential permit parking pursuant to sections 2411, 2412, and 2413 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 2411, 2412, 2413) from 7:00 a.m. until 5:00 p.m. for the purposes of construction, maintenance, or repairs conducted at a single-family residence or a residence with fewer than 4 housing units.

(c) Only a contractor with an appropriate business or professional license, whichever is required for the contractor to do business in the District, may purchase a CDP permit.

(d) DDOT shall sell CDP permits to licensed contractors through:

- (1) Electronic or phone-based systems;
- (2) Booklets of tickets registered to a contractor, as opposed to a specific vehicle; and
- (3) Other means selected by DDOT.

(e) A CDP permit shall be valid for one day only and shall expire at 5 p.m. on the date for which the permit is issued.

(f) The fee for a CDP permit shall be \$10 per day, plus applicable service fees; provided, that DDOT may adjust this fee by rule.

(g) Fees collected from the issuance of CDP permits shall be used to administer the program and shall be paid into the DDOT Enterprise Fund for Transportation Initiatives, established under § 50-921.13.

(h) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall issue rules to implement the provisions of this section. The proposed rules shall be submitted to the Council for a 45-day period of review,

excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within the 45-day review period, the proposed rules shall be deemed disapproved.

(i) One year from the date that CDP permits are first available for purchase, the Mayor shall transmit a report to the Council evaluating the Program's performance, including an evaluation of possible abuse of the Program.

(Apr. 20, 2013, D.C. Law 19-254, § 2, 60 DCR 984.)

Legislative history of Law 19-254. — Law 19-254, the "Neighborhood Contractor Daytime Parking Permit Act of 2012," was introduced in Council and assigned Bill No. 19-607. The Bill was adopted on first and second readings on

Dec. 4, 2012, and Dec. 18, 2012, respectively. Signed by the Mayor on Jan. 10, 2013, it was assigned Act No. 19-590 and transmitted to Congress for its review. D.C. Law 19-254 became effective on Apr. 20, 2013.

TITLE 51. SOCIAL SECURITY.

CHAPTER 1. UNEMPLOYMENT COMPENSATION.

Subchapter I. General.

PART A.

ADMINISTRATION OF THE DISTRICT UNEMPLOYMENT FUND.

§ 51-110. Disqualification for benefits.

Section references. — This section is referenced in § 51-101, § 51-103, § 51-107, § 51-109, and § 51-111.

CASE NOTES

Drug use, misconduct of employee.

Denial of the claimant's petition for unemployment compensation benefits by the office of administrative hearings was erroneous, as the employer did not meet its burden to prove misconduct, gross or simple, because it failed to

establish that the claimant's conduct, use of marijuana off the employer's premises, had any connection to his employment. *Johnson v. So Others Might Eat, Inc.*, 53 A.3d 323, 2012 D.C. App. LEXIS 484 (2012).

TABLES

The tables contained in this October 2013 Advance Service update the 2013 Supplement with all Code sections added, amended, or transferred since the publication of that volume.

STATUTES AT LARGE

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Date	Page	Pub. L.	Chapter	Section	2001 D.C. Code
May 1, 2013	127-441	113-8	...	1	1-204.24b, note
				2	1-204.24b
				3	1-204.24b, note

DISTRICT OF COLUMBIA LAWS

Date	D.C. Law	Section	2001 D.C. Code	Date	D.C. Law	Section	2001 D.C. Code
Oct. 23, 2012	19-191		8-431	Apr. 20, 2013	19-253	2(b)	47-4657
		3	8-432			3	47-4657 note
		4	8-433			4	47-4657 note
		5	8-434			19-254	2
		6	8-435			19-255	2(b)
		7	8-436			3	47-4658 note
		8	8-437			19-256	2
		9	8-438			3	39-127 note
		10	8-439			19-257	2(b)
		11	8-440			3	39-127 note
		12(a)	8-403			19-257	2(b)
		12(b)	8-403.05			3	47-4656 note
		12(c)	8-404			19-258	2
		12(d)	8-411			19-259	2
		12(e)	8-418			2	50-2201.05a
		13	8-108.02			19-260	2
		14(a)	8-431 note— 8-434, 8-437 note— 8-440, 8-403 note, 8-403.05 note, 8-404 note, 8-411 note, 8-418 note, 8-108.02 note			3	5-1419 5-1501.07
						4(a)	50-2206.52
						4(b)	50-2206.52a, 50-2206.52b, 50-2206.52c
		14(b)	8-435 note, 8-436			5	5-1419 note, 5-1501.07 note, 50-2206.52 note, 50-2206.52a note, 50-2206.52b note,
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		2(m)	25-402			2(h)	38-2021.13 note
		2(n)	25-403			2(i)	38-2021.14 note
		2(o)	25-421			2(j)	38-2021.15a note
		2(p)	25-432			2(k)	38-2021.17 note
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		2(r)	25-446			2(n)	38-2021.27 note
		2(s)	25-446.01, 25-446.02		19-314	2(a)	5-701
		2(t)	25-501			2(b)	5-704
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		205(cc)	22-723			232(n)	22-3010.02
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		232(f)	22-3008			276(a)	50-2421.04
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		201	5-301			2(g)	1-204.47
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This table indicates those acts, by name, which are incorporated in the 2001 Edition of the District of Columbia Code.

The table is alphabetized by the name of the act. The date and citation of the act appears directly below each name. Reference should be made to the Disposition Table, where by means of the date and citation of the act one can determine the disposition of the act in the 2001 Edition.

Access to Justice for Bicyclists Act of 2012
Apr. 20, 2013, D.C. Law 19-264, 60 DCR 1346.

Administrative Disposition for Weapons Offenses Amendment Act of 2012
Apr. 27, 2013, D.C. Law 19-295, 60 DCR 2623.

Autonomous Vehicle Act of 2012
Apr. 23, 2013, D.C. Law 19-278, 60 DCR 2119.

Bad Actor Debarment and Suspension Amendment Act of 2012
Apr. 27, 2013, D.C. Law 19-298, 60 DCR 2631.

Basic Business License Renewal Amendment Act of 2012
Apr. 23, 2013, D.C. Law 19-277, 60 DCR 2117.

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May 1, 2013, D.C. Law 19-305, 60 DCR 2735.

Beulah Baptist Church Real Property Equitable Tax Relief Temporary Act of 2013
Apr. 27, 2013, D.C. Law 19-297, 60 DCR 2629.

Bloomingdale and LeDroit Park Backwater Valve and Sandbag Act of 2012
Apr. 27, 2013, D.C. Law 19-292, 60 DCR 2354.

Breath Test Admissibility in Criminal Proceedings Amendment Act of 2012
Apr. 20, 2013, D.C. Law 19-260, 60 DCR 1292.

Child Sexual Abuse Reporting Amendment Act of 2012
June 8, 2013, D.C. Law 19-315, 60 DCR 1702.

Chuck Brown Park Designation Act of 2012
Apr. 20, 2013, D.C. Law 19-259, 60 DCR 1082.

Closing of a Public Alley in Square 393, S.O. 11-08780, Act of 2012
Apr. 20, 2013, D.C. Law 19-000, 60 DCR 1707.

Compassionate Release Authorization Amendment Act of 2012
June 15, 2013, D.C. Law 19-318, 59 DCR 12469.

Comprehensive Impaired Driving and Alcohol Testing Program Amendment Act of 2012

Apr. 27, 2013, D.C. Law 19-266, 59 DCR 12957.

Construction and Demolition Waste Recycling Accountability Act of 2012

Apr. 27, 2013, D.C. Law 19-294, 60 DCR 2619.

Consumer Protection Act of 2012

Apr. 23, 2013, D.C. Law 19-282, 60 DCR 2132.

Council Notification on Enforcement of Laws Amendment Act of 2012

Apr. 27, 2013, D.C. Law 19-287, 60 DCR 2322.

Criminal Fine Proportionality Amendment Act of 2012

June 11, 2013, D.C. Law 19-317, 60 DCR 2064.

Department of Parks and Recreation Fee-based Use Permit Authority Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-280, 60 DCR 2124.

Department of Parks and Recreation Revenue Generation Clarification Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-275, 60 DCR 2058.

District of Columbia Flood Assistance Fund Act of 2012

Apr. 27, 2013, D.C. Law 19-293, 60 DCR 2613.

District Department of Transportation DC Streetcar Amendment Act of 2012

Apr. 20, 2013, D.C. Law 19-268, 60 DCR 1709.

Equity in Survivor Benefits Amendment Act of 2012

May 1, 2013, D.C. Law 19-301, 60 DCR 2310.

Excise Tax Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-272, 60 DCR 1729.

Fire and Emergency Medical Services Employee Presumptive Disability Amendment Act of 2012

May 1, 2013, D.C. Law 19-311, 60 DCR 3425.

Foster Youth Statements of Rights and Responsibilities Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-276, 60 DCR 2060.

Grandparent Caregivers Program Amendment Act of 2012

Apr. 20, 2013, D.C. Law 19-261, 60 DCR 1346.

Greater Mount Calvary Way Designation Act of 2012

Apr. 20, 2013, D.C. Law 19-265, 60 DCR 1348.

Howard Town Center Real Property Tax Abatement Act of 2012

Apr. 20, 2013, D.C. Law 19-257, 60 DCR 992.

Ignition Interlock Amendment Act of 2012

Apr. 20, 2013, D.C. Law 19-258, 60 DCR 1080.

Interstate Compact on Educational Opportunity for Military Children Establishment Act of 2012

May 1, 2013, D.C. Law 19-304, 60 DCR 2717.

Israel Senior Residences Tax Exemption Act of 2012

Apr. 27, 2013, D.C. Law 19-285, 60 DCR 2316.

Local Budget Autonomy Amendment Act of 2012

July 25, 2013, D.C. Law 19-321, 60 DCR 1724.

Motorized Bicycle Amendment Act of 2012

Apr. 27, 2013, D.C. Law 19-290, 60 DCR 2343.

Neighborhood Contractor Daytime Parking Permit Act of 2012

Apr. 20, 2013, D.C. Law 19-254, 60 DCR 984.

New and Used Tire Dealer License Act of 2012

Apr. 23, 2013, D.C. Law 19-279, 60 DCR 2122.

Omnibus Alcoholic Beverage Regulation Amendment Act of 2012

May 1, 2013, D.C. Law 19-310, 60 DCR 3410.

Omnibus Criminal Code Amendments Act of 2012

June 19, 2013, D.C. Law 19-320, 60 DCR 3390.

Parkside Parcel E and J Mixed-Income Apartments Tax Abatement Act of 2012

Apr. 20, 2013, D.C. Law 19-255, 60 DCR 987.

Pesticide Education and Control Amendment Act of 2012

Oct. 23, 2012, D.C. Law 19-191, 59 DCR 10166.

Pharmacy Technician Amendment Act of 2012

May 1, 2013, D.C. Law 19-303, 60 DCR 2711.

Pipefitting, Refrigeration and Air Condi-

tioning Mechanic Occupations Equality Act of 2012

Apr. 23, 2013, D.C. Law 19-274, 60 DCR 2055.

Police and Firefighter's Retirement and Disability Omnibus Amendment Act of 2012

May 1, 2013, D.C. Law 19-314, 60 DCR 3466.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Act of 1998 Amendment Act of 2012

May 1, 2013, D.C. Law 19-308, 60 DCR 3386.

Police Officers, Fire Fighters, and Teachers Retirement Benefit Replacement Act of 1998 Temporary Amendment Act of 2012

May 1, 2013, D.C. Law 19-309, 60 DCR 3388.

Portable Electronics Insurance Amendment Act of 2012

May 1, 2013, D.C. Law 19-306, 60 DCR 2746.

Pre-litigation Discovery of Insurance Coverage Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-281, 60 DCR 2129.

Public Library Hours Expansion Act of 2012

Apr. 20, 2013, D.C. Law 19-256, 60 DCR 990.

Public Vehicle-for-Hire Innovation Amendment Act of 2012

Apr. 23, 2013, D.C. Law 19-270, 60 DCR 1717.

Re-entry Facilitation Amendment Act of 2012

June 15, 2013, D.C. Law 19-319, 60 DCR 2333.

Reckless Driving Amendment Act of 2012

June 8, 2013, D.C. Law 19-316, 60 DCR 1713.

Regulation of Body Artist and Body Art Establishments Clarifying Amendments Act of 2012

Apr. 23, 2013, D.C. Law 19-271, 60 DCR 1727.

Retail Incentive Amendment Act of 2012

Apr. 27, 2013, D.C. Law 19-288, 60 DCR 2325.

Retirement of Public-School Teachers Omnibus Amendment Act of 2012

May 1, 2013, D.C. Law 19-312, 60 DCR 3434.

Retirement of Public-School Teachers Omnibus Temporary Amendment Act of 2012

May 1, 2013, D.C. Law 19-313, 60 DCR.

Safety-Based Traffic Enforcement Amendment Act of 2012

May 1, 2013, D.C. Law 19-307, 60 DCR 2753.

Schedule H Property Tax Relief Act of 2012

- Apr. 27, 2013, D.C. Law 19-283, 60 DCR 2307.
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- Apr. 27, 2013, D.C. Law 19-291, 60 DCR 2351.
- Service Animals Access Amendment Act of 2012**
- Apr. 27, 2013, D.C. Law 19-291, 60 DCR 2351.
- Sign Regulation Authorization Amendment Act of 2012**
- Apr. 27, 2013, D.C. Law 19-244, 60 DCR 2328.
- State Board of Education Personnel Authority Amendment Act of 2012**
- Apr. 27, 2013, D.C. Law 19-284, 60 DCR 2312.
- Sustainable DC Amendment Act of 2012**
- Apr. 20, 2013, D.C. Law 19-262, 60 DCR 1300.
- The Elizabeth Ministry, Inc. Affordable Housing Initiative Real Property Tax Relief Act of 2012**
- Apr. 20, 2013, D.C. Law 19-253, 60 DCR 982.
- Uniform Commercial Code Article 9 Amendments Act of 2012**
- May 1, 2013, D.C. Law 19-302, 60 DCR 2688.
- Uniform Commercial Code Revision Act of 2012**
- Apr. 27, 2013, D.C. Law 19-299, 60 DCR 2634.
- United House of Prayer for All People Real Property Tax Exemption Technical Temporary Act of 2013**
- Apr. 27, 2013, D.C. Law 19-296, 60 DCR 2627.
- Washington Metropolitan Area Transit Authority Board of Directors Act of 2012**
- Apr. 27, 2013, D.C. Law 19-286, 60 DCR 2319.
- Workforce Job Development Grant-Making Authority Act of 2012**
- Apr. 23, 2013, D.C. Law 19-269, 60 DCR 2136.
- Workplace Fraud Amendment Act of 2012**
- Apr. 27, 2013, D.C. Law 19-300, 60 DCR 2679.

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